

STAFF REPORT

DATE: October 6, 2020

TO: City Council

FROM: Mike Webb, City Manager
Kelly Stachowicz, Assistant City Manager
Zoe Mirabile, City Clerk

SUBJECT: City Advisory Commissions

Recommendation

1. Consider commission related issues and provide feedback to staff.
2. Appoint a Council Subcommittee to review recommendations with staff and commissions, as the subcommittee may deem appropriate, and return to Council with specific recommendations for implementation.
3. Provide feedback to staff regarding proposed changes to the staff report template.
4. Direct staff to continue with development of mandatory commissioner training.
5. Determine that current commissioners with terms ending December 31, 2020 will have terms extended to March 31, 2021 to allow time for commission recruitment and onboarding

Fiscal Impact

The immediate action items are covered with existing staff time and budget. Costs associated with any future recommendations will be addressed at the time they are brought forward.

Council Goal(s)

Commissions assist with furthering the following Council Goals:

- Ensure fiscal resilience
- Drive a diverse and resilient economy
- Pursue environmental sustainability
- Fund, maintain and improve the infrastructure
- Ensure a safe, healthy, equitable community
- Build and promote a vibrant city
- Foster excellence in city services

Background and Analysis

The City of Davis has a long tradition of citizen advisory groups, mainly in the form of commissions, to provide input and recommendations to the City Council. The City Council currently has 15 commissions comprised of Council-appointed citizen volunteers who advise the Council on subjects within each commission's purview. The City Council utilizes the information from its commissions, staff, the general public, other

jurisdictions, and their own research and experience to make decisions on issues that come before the Council. The Council's use of commissions exceeds that of many of its neighbors and similarly sized cities. As examples, Palo Alto, Santa Cruz and Woodland each have approximately 10-11 commissions; West Sacramento, Rocklin and Folsom have 6-8 commissions apiece.

The commission process is not a static one. Those involved with commissions are often looking for ways to improve the overall public decision-making process. To this end, in late July, the City Council received a letter (Attachment 1), signed by several sitting commissioners and outlining a number of recommendations related to the use of commissions and focusing on decision making and transparency in local government proceedings (hereafter referred to as "the letter"). The letter was an independent effort by individuals; no commissions, staff or Council were involved in the development of the letter. As such, this report provides the City Council with an opportunity to discuss it and provide feedback to the authors, staff, commissions, and the general public. In addition, staff, individual councilmembers and other commissions have worked on recommendations germane to the broader topic of commissions. The remainder of this report lays out the topics for consideration.

Staff is recommending the City Council provide initial feedback on the various input provided and appoint a Council Subcommittee to work with staff to return at a later date with final recommendations for consideration and approval.

Staff Reports. Staff reports follow a certain format, with sections for Recommendations, Fiscal Impact, Council Goals and Background/Recommendations. When a report is submitted to the City Council, however, there is no uniform standard for individual staff to relay information about commission actions on the subject. Reports thus vary in the level and location of any commission details they may provide. Staff concurs with the suggestion that staff reports should be modified to include information from commissions in a consistent manner. Specifically, staff recommends each staff report have a brief "Commissions" section just prior to the Background/Analysis section. This new section should include the commissions that heard the item, a brief synopsis of the discussion and any specific motions/recommendations from the commission(s) (along with the vote). If the item did not go to any commissions, as not all items are relevant to a commission, then this section can simply read "No commissions discussed this item." Addition of this section should not preclude additional reference to any commission discussion or actions in the Background/Analysis section, as appropriate to the item.

A sample has been included in Attachment 2. Staff would value input from the Council or a Council Subcommittee as to what is useful to the Council in terms of presentation. Or, if Council prefers, staff can begin to use this revised format immediately.

It is important to note that Council is not bound by any one commission's recommendations. In fact, on occasion, one commission may have a recommendation or input that is contrary to another commission's recommendations. The input from commissions provides one piece of information for the City Council to consider among

the many information streams. The ability to see all responses from commissions in one place in a staff report is likely to be valuable to Council and the public alike.

Commissioner Applications. The Human Relations Commission has discussed the current commissioner applications and recruitment process over the past year. They have expressed concerns about the current application, suggesting that it might be revised to simplify it, to clarify wording and to encourage more diversity in applicants. Staff concurs that the application could be made less onerous and has included a sample of proposed revisions from the Commission in the draft application in Attachment 3. A Council Subcommittee could review and provide feedback on these suggestions.

Commissioner Training. The letter indicates that the City provides minimal commissioner onboarding and training and suggests both standardizing and requiring training of all commissioners. Staff concurs with the majority of this and was working on developing commissioner videos when COVID hit in the spring, forcing a hold on the efforts. Currently, staff liaisons are responsible for ensuring that new commissioners understand the Brown Act, the role of advisory commissions and the responsibilities of the particular commission to which they are appointed. The commissioner handbook is to be distributed to every commissioner (now electronically), and commissioners are responsible for reading through the handbook on their own. Different staff liaisons provide different levels of training and expertise for new commissioners. A good example of commissioner training materials developed by staff, with input from commissioners over time, in this case for the Utilities Commission, can be found in Attachment 4.

To address commissioner training, staff has been working on developing information for a general video for new commissioners to cover information relevant to all commissions. Staff recommends that watching this video, once it is complete, or participating in person in a training that covers similar topics, should be mandatory for all new commissioners. The training should be completed prior to a commissioner participating in commission meetings, or as soon thereafter as is practical.

Subject matter training specific to a particular commission will vary based on the commission, but every new commissioner should be afforded the opportunity to meet with the staff liaison and/or commission chair to review the current workplan of the commission and ask any questions specific to that commission. As commissioners are community volunteers, the Council should consider time commitments necessary if new commissioners were required to observe any specific number of commission meetings prior to their appointment or participation, but it can certainly be encouraged as a means of become oriented with the work of the commission before being officially seated on the commission. The Council Subcommittee has made a point over the past number of years to ask every applicant during interviews whether they have attended any prior commission meetings.

All-Chair Meeting. In addition to individual commissioner training, the letter recommended an all-day, all-commission meeting of the Chairs. Chairs and Vice-Chairs

are elected by their commission peers to preside over the meetings and to interact with staff in the development of the agenda (See below.) They do not currently have additional authority or obligations. Chairs and Vice-Chairs, like other commissioners, are volunteers and the time commitment required for this effort may need to be balanced with other time commitments. Staff recommends that a Council Subcommittee consider the goals behind this suggestion to determine whether an all-chair meeting or other type of cross-commission interaction would be valuable to commissioners and/or the Council.

Commission Agendas. The development of commission agendas is part science, part art. Some commissions, such as the Planning Commission or the Tree Commission have an obligation to hear and provide feedback on applications made to the City. As such, their agendas are often set as applications are ready to come forward. In some cases, the City has legal obligations to schedule matters within time certain pursuant to state law, such as projects subject to the Permit Streamlining Act. Other commissions may have a mix of agenda items, with some that are necessary because of timelines to get information to the City Council and others that may be at the request of the commission and/or do not have the same time constraints.

Ultimately, the staff liaison is responsible to ensure the items that have deadlines for review are agendaized at the appropriate time. Commissions should follow a process similar to that of the City Council to agendaize other items: the topic should be on the commission's long-range calendar, or a commissioner at a meeting should request a topic be placed on a future agenda.

The role of the commission chair is similar to the role of the mayor in preparing an agenda and should focus on meeting management. The commission chair should work with the staff liaison to determine how many items are reasonable for one meeting, the order of those items and the relative length of time for each item. The commission chair does not set the agenda. The items coming before commissions should be those that are consistent with the commission charge, those that are required pursuant to the City Municipal Code, and those that are in alignment with city workload priorities as may be dictated by City Council goals, for example. A commission wishing to take up a new matter should evaluate the consistency of the subject with the above and with the staff liaison. As the City Council provides direction and priorities to the City Manager, new matters that a commission wishes to take up that are not part of the approved commission workplan and that would require substantive effort of staff should be brought forward to the City Council by staff for consideration and direction.

Process to move items to and through the City Council. The process for an item to reach the City Council varies, based on a number of factors. Some items are driven by applications and have process requirements laid out in the municipal code – zoning changes to the Planning Commission, tree appeals to the Tree Commission; affordable housing requirements to the Social Services Commission. Other commissions (Historic Resources Management, Civic Arts, Open Space and Habitat, etc.) have certain tasks spelled out in the code and items related to those tasks are taken to the respective commissions.

Other items do not have a predefined path from inception to the City Council. The City Manager and Department Head team work together to determine the path an item needs to take before it reaches the City Council. This may involve a commission or commissions, outside agencies, neighborhood groups, etc.

Finally, there are many items that staff brings forward directly, generally because they are routine (e.g. certain implementation contracts), are solely in the purview of the City Council (e.g. labor negotiation reports), are time sensitive or do not fall into the purview of any of the advisory commissions.

Given the breadth of items that Council receives over the course of a year, further discussion and consideration with the City Council Subcommittee would be prudent. Legal considerations should also be considered, such as a housing proposal that is subject to SB330 limitations on how many meetings and hearings the City can hold. The City does historically map out the process for larger undertakings, and many, but not all, of those processes are brought to City Council for input prior to embarking on the effort. The Downtown Plan update, the Housing Element Update, the Broadband Task Force, and the Climate Action and Adaptation Plan update are a few examples where staff has brought forward a proposed process for City Council review and input early in the effort. The Council Subcommittee can consider if clarification is needed for certain types of items, such as large development project proposals or substantial policy undertakings, staff believes the City Council may find it beneficial to develop guidelines to provide clarity to applicants, commissions, staff and other stakeholders at the onset of the process.

The Commission handbook (p.43) does provide guidance on those commissions that are expected to weigh in on various land use development applications. Attachment 5 The Council Subcommittee can also evaluate what types of development proposals or other project types may warrant a broader range of commission input.

Presenting to the City Council. Prior to a Council meeting, the City Manager is responsible to work with individual councilmembers to understand what information they want and need to assist in their deliberation and decision-making process. The City Manager designates specific staff to prepare written staff reports, provide professional recommendations, and then present those recommendations. In some cases, staff recommendations will not align with the opinions of other advisory groups, whether they are commissions or outside agencies. While it is important for the differing viewpoints to be noted in writing and verbally, staff will continue to provide their professional recommendations to the Council for consideration. If the City Council does not feel an item has been fully vetted, they can request the City Manager return with the desired information at a future meeting. If the Council does not believe the City Manager is fulfilling his duties, they may address that personnel issue separately and privately.

In certain cases, it is helpful to have parallel presentations by representatives of advisory groups. For example, the Chair of the Downtown Plan Advisory Group presented when that plan was brought to the City Council, as did the chair of the Broadband Task Force

and more recently the Chair of the Natural Resources Commission. The Council Subcommittee may wish to discuss and provide any desired guidance as to those circumstances when such joint presentations should be considered.

Other Considerations for Handbook. There are a number of other items that staff would recommend to include in the Commissioner Handbook to provide clarity to commissioners and staff alike. These items include the following:

- Clarification from the City Attorney about when commissions can meet with each other, when subgroups of commissions can meet with each other and Brown Act considerations such as the topic, duration (ad hoc vs. ongoing), etc.
- Scope creep
- Process to request information and data from staff
- Conflicts of interest and when/how to address those
- Special meetings (when allowed and process to allow)
- Commissioner discipline procedure - Approximately a year ago, the City Council reviewed its discipline procedure for commissioners and determined that it needed to be clarified for the benefit of councilmembers and commissioners alike. In working with the Council Subcommittee on Commissions (Frerichs, Lee), staff recommends inclusion in the Commissioner Handbook a section that outlines a graduated disciplinary process in the case of commissioners who are disruptive to the public process. To be clear, this is intended for commissioners who disrupt process, not for commissioners who have ideas that may be counter to those of the rest of the commission or to the Council.
- Additional clarification on The Brown Act - This set of rules applies to public bodies and is intended to guide the public process in California. The Commissioner Handbook would benefit from additional explanation about The Brown Act and how it applies to commissioners and commission agendas, as well as differences with the City Council. The Council, for example, is permitted to hold Closed Session discussions under parameters laid out by law, while commissions are not.

A Council Subcommittee would be instrumental in helping to develop options for inclusion in the commission handbook.

Term Endings. The current term endings for half of commissioners was designed for when the Council elections were in June. The current ending date for a portion of commissioners is December 31, 2020. With a November Council election, this term ending date will not provide enough time for the new Council to interview and appoint new commissioners. Staff recommends asking current commissioners whose terms expire this December to continue to serve until March 2021 or until the Council can complete the appointment process, whichever is sooner. The Commission Handbook already asks that commissioners continue to serve until their replacement is designated, but this will provide some certainty to commissioners whose terms are set to end in December. In addition, the Council should consider shifting the end dates of commissioner terms, so that instead of December and June staggered end dates, the end dates become March and

September. The appointees in this upcoming round should have terms that end in March of 2025.

Interviews. For the past seven to eight years, a City Council Subcommittee has been interviewing all commission applicants and making recommendations to the full Council regarding appointments. Council members have indicated this process has been beneficial. Assuming that the Council is interested in continuing the process, it should appoint a new subcommittee to engage in interviews for the 2021 calendar year. The City Council should consider appointment of a Subcommittee each appointment period or at least each year.

Conclusion. The City Council has relied and continues to lean on its many advisory commissions to provide insight and expertise in the broader decision making process. We are fortunate in Davis to be able to draw from a deep well of perspectives: whether subject matter experts, users of city services, or simply civic-minded individuals interested in their community, commissioners have and continue to play a vital role in the Council's overall decision-making process.

Attachments

1. Improving Decision Making Letter (7-23-2020)
2. Sample Staff Report
3. Commissioner Application Proposed Revisions
4. Sample training materials (Utilities Commission)
5. Commissioner Handbook
6. Utilities Commission Recommendation (9-16-2020)
7. Improving Decision Making Letter Follow Up (9-29-2020)

Improving City of Davis Decision Making: An Open Letter

Informed and transparent decision-making is an essential pillar of good local governance. In Davis, this pillar is eroding. Recent years have seen multiple alarming instances of secretive action, shortsighted planning, and disconnect between community and leadership priorities.

We the undersigned—including current and former members of city commissions—call on City Council to address these issues. Specifically, we urge swift adoption of the attached common-sense proposals regarding (1) transparency, information disclosure and public engagement, (2) city commissions, and (3) advancement of significant actions and initiatives.

An unparalleled level of civic engagement and civic pride is one of Davis's greatest strengths. Over 120 Davis citizens participate on city commissions (a term that also includes city boards, task forces, and committees), volunteering substantial time and effort to hear public comments, provide expert analysis, and propose informed actions on the issues that shape Davis' present and future. In short, commissioners work tirelessly to ensure that the public voice is heard at all levels.

Because they serve as conduits between Davis government and Davis residents, commissioners are sometimes referred to as the “eyes and ears” of the City Council. Unfortunately, distance has grown between the City's eyes and ears and its core executive bodies. Council and staff routinely make major decisions following only cursory consultation with relevant commissions. In the most egregious cases, such as with the BrightNight lease option agreement, relevant commissions are not consulted at all.

When commissions do have the opportunity to give input, commission perspectives are often given less weight than staff perspectives. This is evidenced in part by the fact that staff representatives regularly participate in Council deliberations on key items, but commission representatives are rarely invited or allowed to participate.

Other challenges further undermine the capacity of city commissions to participate actively in decision making.

First, Council makes very little information available about the nature of its closed sessions. While confidentiality of details may be justifiable in some cases, near-complete opacity surrounding the subjects and outcomes of closed sessions is not.

Second, conflicting guidance from City staff renders it functionally impossible for different commissions to collaborate on topics of mutual interest.

Third, the City provides almost nothing in the way of commissioner onboarding and training. This means that commissions are largely populated by individuals who have deep subject-matter expertise, but limited knowledge of how to contribute that expertise productively.

City Council can correct these problems by adopting the attached proposals. The result will be a Davis that is shaped by all its residents—a Davis that is not just a city, but a community.

The following signatories to this letter and the attached proposal are signing as individuals, not as official representatives of their city commissions or any other organization. Names are listed in alphabetical order, and people's affiliations are noted for information only.

Crilly Butler, former Commissioner, Bicycling, Transportation and Street Safety Commission

Michael Corbett, former Mayor of Davis

Larry Guenther, Chair, Tree Commission

Dillan Horton, Chair, Police Accountability Commission

Lorenzo Kristov (cosimo91@gmail.com), Commissioner, Utilities Commission

Elizabeth Lasensky, Chair, Senior Citizen Commission

Richard McCann (rjmccann58@gmail.com), Commissioner, Natural Resources Commission

Roberta Millstein, Chair, Open Space and Habitat Commission

Jeff Mischkinsky, Member, Broadband Advisory Task Force

Alan Pryor (ozone21@att.net), Commissioner, Natural Resources Commission

Greg Rowe, Commissioner, Planning Commission

Hannah Safford, Co-Chair, Natural Resources Commission

Johannes Troost (johannes2020@gmail.com), Chair, Utilities Commission

Erik Vink, Alternate, Recreation and Park Commission

Colin Walsh, Commissioner, Tree Commission

Matt Williams (mattwill@pacbell.net), former Chair, Finance and Budget Commission

For further information about this proposal please contact any of the signatories who have provided email addresses.

A Proposal for Improving City of Davis Decision Making

This document offers for public discussion specific proposals for improving the way the Davis City Staff develops proposals to bring to City Council for consideration and approval, as well as the criteria City Council follows in deciding whether to approve proposals presented to it. The objective is to establish and follow city procedures and practices for transparency, information disclosure, public engagement and collaboration, in particular to ensure effective collaboration between City Staff and City Commissions and other volunteer resident experts, so that the City as a whole can realize the full benefits of its considerable local expertise.

This proposal may be refined and improved in the coming months, to be finalized and adopted at the start of the next City Council session or sooner if possible. Upon adoption by the City Council, the City Manager will be responsible for implementing these practices and ensuring City Staff's ongoing adherence.

Elements of the Proposal

The proposal is organized in three sections:

- A. Provisions regarding transparency, information disclosure and public engagement
- B. Provisions regarding City Commissions
- C. Provisions for developing and making decisions on Staff proposals submitted for City Council action.

A. Provisions regarding transparency, information disclosure and public engagement

The intent of California's open meetings law, also known as the Brown Act, is quite clear.

California Government Code, Section 54950: opening paragraphs of the Brown Act:

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

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.

Attorney General Opinion No. 10-206, Dec. 27, 2011, p 2:

The open meetings law known as the Ralph M. Brown Act (Brown Act or Act) was adopted “to ensure the public’s right to attend the meetings of public agencies,” as well as “to facilitate public participation in all phases of local government decision-making and to curb misuse of the democratic process by secret legislation by public bodies.”

To ensure that the City complies with the spirit and intent of the Brown Act, the City Council must be consistently and unambiguously clear that the City Attorney’s obligation with respect to the Brown Act is to maximize transparency, information access and public engagement. Every effort should be made to avoid technical readings of the law to enable closed sessions of City Council or other non-public activities of Staff and City Council that may lead to “*misuse of the democratic process by secret legislation by public bodies.*”

In situations where the City Council and Staff determine that closed session meetings of City Council are needed and appropriate (e.g., for real-estate negotiations per Government Code section 54956.8), the City Council agenda shall provide:

- A full description of the nature of the transaction being considered in closed session;
- A full and clear description of the set of topics being discussed;¹
- Reference to the provisions in state law that allow for closed sessions on the identified topics.

Discussion of other topics in closed session is strictly prohibited unless those topics have already been discussed and resolved in open public proceedings by the City Council.

¹ The following is an example description: “Conference with Real Property Negotiators regarding Solar Facility Lease Option; Property: APN 042-140-013 (no street address) and APN 042-140-009 (City of Davis Wastewater Treatment Plant, 45400 County Road 28H, Woodland, CA 95776); Agency Negotiators: a complete list of City representatives attending; Negotiating Parties: a complete list with names of companies and individual participants; Under Negotiation: Price and terms of payment. See Government Code section 54954.5(b).

The following is an actual description from the Closed Session of 12/16/2014 ([LINK](#)) “Conference with Real Property Negotiators; Property: Easement for drainage, irrigation, and other reclamation purposes traversing 45400 County Road 28H, Davis, CA, APN 042-140-013 (City Wastewater Treatment Plant Property); Agency Negotiators: City Attorney Harriet Steiner, Public Works Director Robert Clarke, Principal Civil Engineer Michael Lindquist; Negotiating Parties: RD2035; Under Negotiation: Price and terms of payment”

Reportable actions by the Council in a closed session shall be decided by a motion and vote of the Council members present, and the results of the vote shall be included in the public announcement of reportable actions.

B. Provisions regarding City Commissions

The following provisions shall be incorporated into the Handbook for City Council-appointed commissions and shall also apply to City Council-appointed committees, task forces and other voluntary advisory or research bodies.

1. Ideally the Council should schedule its Commission Appointments meeting at least three months prior to the date when Commissioners take office. That would give the newly appointed commissioners an opportunity to (i) sit in on at least two meetings before beginning their formal tenure, and (ii) build 2-3 months of observation experience, which will result in more informed questions during the commission onboarding process.
2. Currently the commission onboarding process and materials vary greatly from commission to commission. Standardizing that onboarding process, much like the Commission Handbook has been standardized, should be completed prior to the end of FY 2020-2021.
3. Commission agendas will be prepared by the Commission Chair with input from City Staff and the Commission Vice-Chair. Staff cannot exclude from the agenda any topics the Commission wishes to discuss in their meetings that fall within the scope of the Commission's enabling City Council resolution. The Commission Chair has the discretionary right to delegate some or all of the agenda preparation responsibility to the Staff liaison, with the mutual consent of the Staff liaison.
4. Annually the Chairs from all the Commissions will meet for a full-day public workshop meeting in which each Commission will (i) explain its charge or statement of purpose and scope, (ii) give a brief review of last 12 months activities and recommendations made to City Council, and (iii) identify the subjects the Commission expects to address in the coming 12 months. As part of the meeting the Commissions will identify those subjects where their charges intersect and agree on next steps to begin collaborative efforts on those subjects. This meeting should be scheduled on a Saturday or Sunday to maximize the opportunity for public participation, much like the biennial [City Council Goals](#) retreat held in September.

5. Subject to the provisions of the Brown Act, two or more Commissions may form a Task Group consisting of members from each of the respective forming Commissions to perform a specified task, such as information gathering, research, or analysis of alternative actions the Commissions are considering. The Task Group shall not be authorized to make decisions on behalf of its forming Commissions, and should be sized so that it may meet and perform work without requiring publicly noticed meetings. The Task Group will be required to report on its activities, results, findings, etc., in public meetings of all the Commissions participating in the Task Group. City Staff will support the Task Group by providing information as required to fulfill its charge.

If requested by any of the participating Commissions in a Task Group, those Commissions will hold a joint publicly-noticed meeting to decide on any joint recommendations and/or reports they wish their respective Commissions to collectively make to City Council or the Planning Commission. Commissions may also make their own individual recommendations to City Council per their normal procedures.

C. Provisions for Staff development of and City Council decision making on proposals regarding specific City initiatives and actions

Applicability: This framework shall apply to all significant actions and initiatives being considered by the City, whether by direction of City Council or for another reason, including but not limited to:

- climate mitigation, adaptation and resilience measures
- environmental measures related to water, stormwater, trees, habitat and energy
- measures to support local businesses and regional agriculture
- economic development applications and proposals
- housing development applications and proposals
- city procurement and contracting
- alternative uses of city real estate or other property
- alternative uses of public space
- changes to current city utility services

- consideration of new city utility services
- other (e.g., social services, public safety services, parks and recreation, ...)

Consultation Plan: As City Staff begin consideration of an initiative, either by direction of City Council, initiation by City Staff, or for another reason, they shall develop a Consultation Plan for formulating the proposal they will ultimately bring to City Council for approval. The Plan shall describe the following activities and elements:

1. Clearly state the initiative's purpose and objectives, or the problem to be addressed, and any constraints that the final proposal must respect;
2. Identify City Commissions or other Council-appointed bodies whose charge is relevant to the initiative and specify outreach to the key Commission chairs to develop agenda items for discussion;
3. Obtain input from Commissions on:
 - a. the initiative's purpose and objectives, or problem to be solved,
 - b. criteria for evaluating alternative ways to meet the objectives,
 - c. ways the initiative has linkages to other City or community matters, and
 - d. other items raised by Commission members and subject matter experts;
4. Identify parties or segments of Davis population, as well as regional stakeholders, who might be affected by the initiative and ask how they will be affected;
5. Create outreach plans for:
 - a. affected parties, stakeholders and population segments,
 - b. community organizations working in relevant areas,
 - c. the general public, and
 - d. regional collaborators;
6. Identify any need for closed sessions of City Council and the rationale for such needs (see part A above for requirements regarding closed sessions).

Final Staff Report for City Council or Planning Commission Action: The final staff report submitted by City Management for a City Council or Planning Commission meeting where City Staff is seeking approval of its proposal, shall include three additional sections: (i) Commissions/Committees Identified as Relevant, (ii) Public Outreach and Commission

Engagement Activities, and (iii) Formal Commission Recommendations. The first section would simply list the commissions and other Council-appointed bodies whose charge is relevant to the topic of the staff report. The second section would describe what, if any actions, were taken to engage those commissions (and the public) on that topic. The third section would include any formal recommendations adopted by Commissions that engaged in considering a proposal. Those recommendations would be advanced in full, rather than as a summary in the Staff Report. Further, the final staff report must include a description of any closed sessions of City Council conducted as part of the initiative, with an explanation of results of the closed session, a report of votes taken in the closed session, and how the closed session discussions complied with the applicable provisions of California Government Code.

If a staff report lists a particular commission in Section (i) described above, then that staff report must be directly transmitted to all the members of that commission via email at the same time that the staff report is transmitted to Council or other primary recipient of the report. It is not enough to just post the staff report on the City website.

The Staff Report to the City Council or Planning Commission on a proposed action shall provide verbatim all proposals and recommendations from City Commissions in addition to any proposed action by the Staff. The Staff Report may provide Staff's objective assessment, with supporting documentation, of the merits and drawbacks of each proposal for the Council or Planning Commission to consider. The Staff Report shall not definitively oppose any proposal from a City Commission unless that proposal is expressly illegal or against a City policy previously adopted by City Council.

With regard to outside party proposals, such as development applications, purchase, sale and/or lease agreements, the Staff shall not advocate on behalf of a proposal or its proponent in presentations before the City Council or Planning Commission. Only the proponent, or members of the public, or a Council-appointed body such as a Commission that formally adopts a motion in support of the proposal may advocate for an outside party proposal. In particular, Staff shall not opine on whether a project requirement recommended by a City Commission is feasible or not for financial or any other reason other than identified legal restrictions. Rather, it shall be the proponent's responsibility to justify any rejection of a Commission-recommended requirement to the City Council or Planning Commission. The proponent shall be provided sufficient time to present all relevant details of its proposal before the City Council or Planning Commission.

City Council Deliberation and Action:

If a staff report lists a particular commission in Section (i) described above, then a representative of that Commission shall be empowered to participate in any publicly noticed discussion of the item in the report, with equal status as the lead staff member in that discussion. If the Commission passes a formal recommendation on the item, the Commission will designate a specific member to represent the Commission in the publicly noticed discussion. Otherwise the representative shall be the Commission chair by default, or another Commission member designated by the chair. Note that listing a Commission in the staff report on a particular topic would be an invitation for a representative to participate, not a requirement.

If the Staff Report does not demonstrate full compliance with all of the requirements described in this proposal, City Council shall defer action on the initiative and direct City Staff to remedy the deficiencies.

Upon adoption, the City Manager will be responsible for implementing these elements and ensuring City Staff's ongoing adherence. The City Council will consider the City Manager's performance of these responsibilities in its regular assessment of the City Manager's overall performance. Such a review shall be held in a public session by the Council.

STAFF REPORT

DATE: (Date of Council Meeting)
TO: City Council
FROM: (person doing staff report and department head)
SUBJECT: (Should be title for Council agenda)

Recommendation

Summary (if needed)

If report is long and merits a summary, then a sentence about which commissions discussed the item may be included here.

Fiscal Impact

Council Goal(s)

City Commissions

This section should provide a snapshot of the commission process and include the following information:

- *List of commissions that heard the item*
- *Any motions/actions that commissions passed, and related information*
- *Brief description of discussion at commission meeting, if applicable*
- *If the item was not heard by any commissions, this section should read “No commissions discussed this item.”*

Background and Analysis

If there is additional information from the commissions relevant to the analysis, it may be included within this section as well. This will be dependent on the specific item.

Attachments

1.



Return to:

City Clerk's Office
23 Russell Blvd.
Davis, CA 95616

CITY OF DAVIS
APPLICATION FOR APPOINTMENT

Received on:

Diverse public participation is important to us, and on our commissions in particular. We warmly invite applications from all individuals living in Davis, age 18 or older. Every application (no matter how robustly completed) is considered, and everyone will be interviewed.

Please don't let this application be a barrier to apply; if you have any questions, or would like assistance or accommodation in completing the application, please contact the City Clerk's Office at 530-757-5468 or clerkweb@cityofdavis.org

PERSONAL DATA SHEET

(Applicants should live in Davis or the Davis Joint Unified School District service area, or own a business in the Davis area. If you do not meet these criteria, please include a separate statement to address why you are applying for this commission.)

Name: _____ Are you at least 18 years old? _____
Last, First Middle

Preferred Gender Pronouns: _____ Preferred Name if different from First name: _____

Home Address: _____
Number/Street City/State/Zip

Email Address: _____

Main Phone: _____ Alternate Phone: _____

Business Title or Occupation, if applicable: _____

Company/Organization, if applicable: _____

Address: _____
Street Address City, State and Zip

Please list the commission(s) on which you are interested in serving. If you are applying for multiple commissions, please list in order of preference and please provide separate answers for the Commission-Specific Questions.

If you are not appointed to a commission of your choice, are you interested in being contacted by City Council or City staff for other commissions and/or other volunteer service with the City?

☐ Yes

☐ No

DRAFT

In general most questions can be answered in one to five sentences.

Background Information:

Why do you wish to serve as a member of this board or commission?

What would you bring by way of experience to a board or commission? Relevant Information could include governmental and civic experience, special training, education or job experience. A resume can be included

Do you have any interests or associations which might present a conflict of interest? If yes, please explain:

Commission-Specific Questions – Please complete this section for every commission in which you are applying.

What in particular to you feel you bring for the board or commission for which you are applying? (you may choose to include, for example, your philosophy relating the responsibilities of this commission; your assessment of the primary responsibilities of this commission and/or any significant issues facing Davis that might pertain to the commission)?

What do you hope to accomplish as a commissioner?

I am aware of the obligations and responsibilities of this commission and am willing and able to fulfill this commitment should I be appointed: (Initial here: _____)

Please attach your resume or any additional information or statements which you feel would be helpful to the City Council in reviewing your qualifications.

AUTHORIZATION AND RELEASE

I understand that in connection with this application for appointment, the information contained herein will be made available to the general public upon request. I further understand that if appointed, I may be required to take the oath of office and may be subject to requirements for filing financial disclosure statements.

Please Sign Here

Date

NOTE: This document is a public record and may be disclosed/released upon request pursuant to the California Public Records

FOR OFFICIAL USE ONLY

Applications will be kept on file for two years. This application will expire on: _____

Date of appointment by the City Council: _____

Alternate or Regular Commission member
(Circle one)

Length of term: _____

Is this is re-appointment? _____

DRAFT

COMMISSIONER ORIENTATION PACKET

UTILITIES COMMISSION

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COMMISSIONER ORIENTATION PACKET

WELCOME LETTER FROM THE UC CHAIR



PUBLIC WORKS - UTILITIES & OPERATIONS DEPARTMENT

23 Russell Boulevard - Davis, California 95616
530.757.5686 - FAX: 530.758.4738 - TDD: 530.757.5666
cityofdavis.org

[Date]

Dear [Name]:

Welcome and congratulations on your selection and appointment to the Utilities Commission (UC).

Enclosed is an orientation packet that our Commission has created for new members. The packet contains key documents that staff and Commission members will review with you in an orientation meeting that will be scheduled soon by Adrienne Heinig, Management Analyst with the Public Works Utilities & Operations Department.

Thanks again for volunteering your time to help make the City of Davis a great place to live.

Sincerely,

Johannes Troost
Commission Chair

And

Stan Gryczko
City of Davis Staff Liaison to the UC
Public Works Utilities & Operations Director

COMMISSIONER ORIENTATION PACKET

COMMISSION MEMBER LISTING

COMMISSIONER ORIENTATION PACKET

UTILITY RATE ADVISORY COMMISSION FORMING RESOLUTION & PURPOSE UPDATE AND NAME CHANGE RESOLUTION

RESOLUTION NO. 16-173, SERIES 2016

RESOLUTION ESTABLISHING THE CITY OF DAVIS UTILITY RATE ADVISORY COMMISSION

WHEREAS, the City Council relies on Boards, Committees and Commissions to provide advice and information on subjects within their respective scopes; and

WHEREAS, the City Council approved Resolution No. 13-156, establishing a Utility Rate Advisory Committee to review the City's utility rates annually and to make comprehensive recommendations on utility policy and related matters to the City Council; and

WHEREAS, the City Council approved Resolution No. 14-022, amending the structure of the Utility Rate Advisory Committee to extend Council-appointed member terms; and

WHEREAS, the City Council now desires to re-establish this advisory body as a regular City Commission, with membership structure and terms consistent with all other commissions.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Davis does hereby establish the Utility Rate Advisory Commission as follows:

1. ESTABLISHMENT AND PURPOSE

- A. The Utility Rate Advisory Commission is hereby established as set forth herein. The general purpose of the commission is to advise the City Council on the City's utility rates, assumptions and programs, and related utility matters as directed by the City Council.
- B. As an advisory body of the Davis City Council, the commission is established and guided by the following documents, except as otherwise prescribed in this resolution:
 - i. Davis Anti-discrimination ordinance; and
 - ii. Commission Handbook; and
 - iii. Commission Policy Guidelines

2. MEMBERSHIP

- The Utility Rate Advisory Commission shall consist of seven (7) members, with one (1) alternate. All voting members of the Utility Rate Advisory Commission, regular and alternate, shall be appointed by a majority vote of the Council.
- A. Each Utility Rate Advisory Commission member must be 1) a City resident; 2) a City utility ratepayer, or; 3) an individual whose residence or business is geographically located such that the individual or business is directly impacted by Davis utility rates. Members may include, but are not limited to, residents, business owners, students located in County areas receiving any City utility services through a county service area or other county special district or through direct agreement with the City for utility services.
 - B. Individual Utility Rate Advisory Commission members may have demonstrated professional level experience in any or all of the enterprise utilities provided by the City. This professional level experience may consist of engineering, science, management, legal or financial experience directly tied to water, sewer, stormwater or solid waste utilities.

The alternate member shall not vote except upon one of the following conditions:

- A. Absence of one (1) or more of the regular members of the commission.
- B. Disqualification of a regular member of the commission because of an expressed conflict of interest.

3. TERMS OF OFFICE

Members of the commission shall serve a term of four (4) years, or until their successors are appointed by the City Council. For purposes of establishing staggered terms, appointments may be for terms varying between one (1) and four (4) years as the Council may decide. No members shall serve for more than two (2) consecutive terms, except under special circumstances.

4. TERMINATION OF APPOINTMENT

- A. The term of appointment of any member of the Utility Rate Advisory Commission who has been absent from three (3) consecutive regular meetings, or who has missed more than 1/3 of the meetings in a 12-month period, without the approval of the City Council shall automatically be terminated.
- B. Members of the Utility Rate Advisory Commission serve at the pleasure of the Council, and may be removed from office by a majority vote of the Council.

5. VACANCIES

All appointments made to the Commission shall be by action of the City Council. Vacancies on the commission shall be filled for the unexpired term in the same manner in which regular appointments are otherwise made.

6. OFFICERS OF THE COMMISSION

The members of the Utility Rate Advisory Commission shall annually select one (1) of its members as Chairperson and one (1) of its members as Vice Chairperson. No chairperson or vice chairperson shall serve more than two (2) consecutive years as chair.

- A. THE CHAIRPERSON of the commission shall call the meetings to order at the appointed time, shall appoint all sub-commissions, subject to the approval of the commission, shall have all the powers and duties of the presiding officer as described in "Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century," and shall perform such other duties as may from time to time be prescribed by the commission.
- B. THE VICE CHAIRPERSON of the commission shall have all the powers and perform all the duties of the Chairperson in the case of absence or inability of the Chairperson to act. The Vice Chairperson shall perform such other duties as may from time to time be prescribed by the commission or the Chairperson.

7. MEETINGS OF THE COMMISSION

The Utility Advisory Commission shall establish a regular time and place of meeting and shall hold regular monthly meetings. Special meetings of the commission may be called by the Chairperson, or by any four (4) or more voting members of the commission, or by the City Council. Notice for regular and special meetings shall be given in accordance with the Ralph

M. Brown Act. The Public Works Department shall administer the Utility Rate Advisory Commission's activities with support from the City Attorney as may be necessary.

8. QUORUM

For the purpose of transacting business, a quorum of the Utility Rate Advisory Commission shall consist of four (4) of the seven (7) members.

9. DISCLOSURE

Commission members shall be required to comply with the City's Conflict of Interest Code and file in accordance with Disclosure Categories 1, 2, 3 and 4, and with conflicts in Category 4 specific to operations, financing, maintenance and construction of utilities and utility-related activities.

10. FUNCTIONS OF THE COMMISSION

The Utility Rate Advisory Commission shall have the responsibilities as provided in this section and such other duties as the Council may, from time to time, determine:

- a) To recommend adjustments to the City's utility rates after careful review of the facts and key information pertaining to the City's utility systems and infrastructure as required in the rate setting process.
- b) To consider costs associated with providing utility service(s) that include, but are not limited to: operations and maintenance, repair and replacement, large capital projects, debt service payments and reserve requirements, enterprise utility fund reserves, customer demand forecasts and assumptions, demand side management programs, financing options, utility billing issues, customer notification, and regulatory compliance.
- c) To consider both short and long term factors and consequences when recommending annual and/or multi-year adjustments to the City's utility rates.
- d) To advise Council concerning the positive and negative impacts of one year versus multi-year utility rates and to recommend rate policies to the Council.
- e) To consider the utility rates and rate structures of other communities as appropriate to provide sound recommendations to the Council.

PASSED AND ADOPTED by the City Council of the City of Davis this 20th day of December, 2016, by the following vote:


AYES: Arnold, Frerichs, Lee, Swanson, Davis

NOES: None



Robb Davis
Mayor

ATTEST:



Zoe S. Mirabile, CMC
City Clerk

RESOLUTION NO. 19-121, SERIES 2019

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS REGARDING THE PURPOSE AND NAME OF THE UTILITY RATE ADVISORY COMMISSION

WHEREAS, the City Council relies on Boards, Commissions, and Committees to provide advice and information on subjects that are important to the community; and

WHEREAS, the City of Davis provides critical services to its citizens including the provision of utility services, including water, wastewater, stormwater management and solid waste services (through contract); and

WHEREAS, the City of Davis recognizes the necessity of having a Commission to focus on advising the City Council on future utility rates and related matters, which results in the best public policy and involves the community in the process; and

WHEREAS, the Utility Rate Advisory Commission was formed in 2016 to address this charge; and

WHEREAS, the Utility Rate Advisory Commission has requested modifications to the Commission function from that formation; and

WHEREAS, this resolution supersedes Section 10 of Resolution No. 16-173, titled, Functions of the Commission.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Davis does hereby resolve that the function of the Commission shall be revised to read:

10. FUNCTIONS OF THE COMMISSION

The Utility Rate Advisory Commission shall have the responsibilities as provided in this section and such other duties as the Council may, from time to time, determine:

- a) To recommend rate setting principles and reserve policies for Davis utilities; annual or multi-year adjustments to the City's utility rates; and technologies, pilot programs and initiatives for City Council consideration and potential staff evaluation; and
- b) To consider applicable City goals and policies and incorporate them into utility policies; costs associated with providing utility services; utility customer needs and satisfaction with utility services; short and long term factors and consequences identified in rate studies; information provided by city utility managers, the City Council, and City advisory commissions, especially the Natural Resource Commission (NRC) and Finance and Budget Commission (FBC); current and potential future state regulations and policies, industry experience and best practices; and

c) To evaluate and compare options to improve utility service and/or change the scope and methods of service delivery; social and economic equity effects of utility service and rate options on different segments of the Davis community; utility rates and rate structures of other communities to assist with informing policies for Davis; and long-term strategies to achieve service value and efficiency, resiliency, environmental sustainability, and other City objectives.

BE IT FURTHER RESOLVED that the Utility Rate Advisory Commission shall be renamed the Utilities Commission. All other functions and structures of the Commission will remain as previously formed.

PASSED AND ADOPTED by the City Council of the City of Davis on this 30th day of July, 2019, by the following vote:


AYES: Arnold, Carson, Frerichs, Partida, Lee

NOES: None



Brett Lee
Mayor

ATTEST:



Ede S. Mirabile, CMC
City Clerk

COMMISSIONER ORIENTATION PACKET

CURRENT COMMISSION WORKPLAN

UTILITIES COMMISSION WORKPLAN

To Consider:

- applicable City goals and policies and incorporate them into utility policies;
- costs associated with providing utility services;
- utility customer needs and satisfaction with utility services;
- short and long term factors and consequences identified in rate studies;
- information provided by city utility managers, the City Council, and City advisory commissions, especially the Natural Resource Commission (NRC) and Finance and Budget Commission (FBC);
- current and potential future state regulations and policies, industry experience and best practices; and

To Evaluate and compare:

- options to improve utility service and/or change the scope and methods of service delivery;
 - social and economic equity effects of utility service and rate options on different segments of the Davis community;
 - utility rates and rate structures of other communities to assist with informing policies for Davis; and
 - long term strategies to achieve service value and efficiency, resiliency, environmental sustainability, and other City objectives; and
- To Recommend:
- rate setting principles and reserve policies for Davis utilities;
 - annual or multi-year adjustments to the City's utility rates; and

Relevant Council Goals	Work Plan/Actions	
	Ongoing Tasks	
Ensure Fiscal Resilience; Fund, Maintain, and Improve Infrastructure	Review Enterprise funds cost of service assumptions and compare to actual financial data. Stormwater, Wastewater, Water and Solid Waste will be reviewed. The Commission will make recommendations on Utility Rates. Also conduct annual financial review of each Fund.	
	<p>Utility Rate Study Recommendation Procedure (12 month process)</p> <ol style="list-style-type: none"> 1. Conduct a Special Meeting to review the background and relevant details of the Utility. 2. Review draft Rate Study Request For Proposal for content and requirements, recommend adjustments/ changes (one meeting). <ol style="list-style-type: none"> a. Recommend one commission member to participate in consultant selection process. 3. Review Scope of Work from selected consultant, recommend scope changes, and recommend approval of Scope of Work to Council (one meeting). 4. Review cost of providing services (financial plan) outlining funding requirements of utility. Ask questions/ provide feedback. No formal recommendation on needs of utility (one to two meetings). 5. Review rate scenarios (developed per approved Scope of Work) developed after completion of financial plan. Recommend changes/ modifications to scenarios. No formal recommendation (one meeting). 6. Review draft cost of service report, including final rate scenarios. Recommend adoption or other action for Council consideration (one meeting). 	
Ensure Fiscal Resilience, Drive a Diverse and Resilient Economy	Participate in Broadband Taskforce effort and provide feedback when appropriate.	
Ensure Fiscal Resilience, Drive a Diverse and Resilient Economy	Examine how ratepayers are affected by emerging technologies other agencies are implementing.	
Ensure Fiscal Resilience; Pursue Environmental Sustainability	Review water conservation regulations and how regulations and methods of water conservation impact rates, including the potential to incentivize water conservation. As regulations are updated.	
Ensure Fiscal Resilience; Pursue Environmental Sustainability	Review Community Choice Energy rate impacts on Davis ratepayers and rate categories.	

Relevant Council Goals	Work Plan/Actions	
	One-time Tasks	
Ensure Fiscal Resilience; Fund, Maintain, and Improve Infrastructure	In conjunction with the Finance and Budget Commission (FBC), review and analyze fund balances and establish clear and transparent reserve policies for Water, Wastewater, Storm Drainage, and Solid Waste funds. Subcommittee Assigned: Enterprise Fund Reserve Policies	2019
Ensure Fiscal Resilience; Pursue Environmental Sustainability	Review updates to Integrated Waste Management Plan; Urban Water Management Plan for rate impacts	2019-2020 - UWMP Submitted in 2020
Ensure Fiscal Resilience; Fund, Maintain, and Improve Infrastructure	Relocation of the Materials Recovery Facility (MRF) from 2727 Second Street Subcommittee Assigned: Determine the Plausibility and Net Benefits of Moving the MRF	2019/2020
Ensure Fiscal Resilience; Pursue Environmental Sustainability	Solid Waste rate implications of the implementation of SB 1383	2019 through implementation in 2032
Ensure Fiscal Resilience; Pursue Environmental Sustainability	Long-Term Strategy of Utility Services Subcommittee Assigned: Develop a Vision for Integration of Davis Utilities	

COMMISSIONER ORIENTATION PACKET

UTILITIES COMMISSION PROCEDURES

URAC Procedural Guidelines

1. In order to facilitate productive meetings, when possible, staff will provide documents, in draft form, to URAC members for comment/questions prior to meeting date for review. The intent is to provide these documents, two weeks prior to the next meeting to allow for a week of review and comment by Commission members and a week for staff to consider comments/suggestions and update documents. Comments will be compiled and shared at meeting as part of staff report on topic.
2. Agendas will include, where appropriate, specific, intended meeting outcomes consistent with URAC's overall annual workplan. Members are encouraged to keep the outcome in mind, and the Chair will determine when a specific line of inquiry or discussion should be tabled in order to stay focused on achieving the targeted meeting result consistent with full and complete relevant discussion.
3. When tasked with providing information/recommendations to City Council, URAC requests staff to include the following:
 - A. Formulate a problem statement/define deliverable.
 - B. Provide a date when the matter is to be discussed or heard by the City Council.
 - C. Outline staff's plan for parallel or supporting work and recommendations.
 - D. Timeline to include proposed meeting dates for URAC deliberation on initial steps, check-ins as needed, and end product.
 - i. What does City Council need? (City Council Goals)
 - ii. What are City Council policies?
 - iii. What are competing priorities?
 - iv. Pros and cons of an issue?
4. URAC prefers a staff report on contentious and/or complicated issues, specifically when the URAC is tasked with providing a decision/recommendation. The report should separate out factual information from any staff recommendation.
5. If a URAC recommendation is to be presented to City Council, the commission may decide which member should represent the URAC position other than the Chair during public comment for agenda item.
 - A. A recommendation by URAC should provide sufficient documentation of the pros and cons to allow the City Council to make a sufficiently informed decision.
 - B. If URAC cannot come to a majority decision on a recommendation regarding a particular issue, a list of options considered with the pros and cons for each will be forwarded to City Council.
6. If URAC receives a request from a member of the public to be added to the agenda, staff and the Chair shall determine whether it is timely and relevant to the URAC's charter and or specific charge from the City Council. Staff will clearly state on the agenda who is a "presenter" and his/her time limit for making a presentation. A URAC member may be a "presenter" on topics as appropriate to his/her experience and expertise and relevance to URAC's work. Staff will need at least a 10-day notice prior to the meeting to accommodate such a request.
7. Generally, public comment will be limited to 3 minutes per item, per person.
 - A. Staff will state the time limit and process for public comment on the agenda.
 - B. The time for public comment can be increased or decreased at the discretion of the Chair depending on how many members of the public wish to speak, or by a simple majority of the URAC.

- C. Public comment takes place at beginning of each meeting for items not listed on the agenda or for items on the agenda if a speaker cannot stay until a particular item is scheduled. On each agenda item, the Chair will provide an opportunity for public comment following staff and other presentations and questions by URAC.
 - D. If a member of the public refuses to stop speaking once his/her time limit has expired and been asked to conclude by the Chair, the Chair shall make a motion to recess the meeting. After the motion has been seconded, and a vote to recess has been approved, the meeting will be recessed for five minutes, and then reconvened after the disruptive person is no longer speaking.
 - E. If a large number of people from the public are expected to comment at a URAC meeting, staff should find a more appropriate venue to hold the meeting.
8. If a URAC member is attending another meeting (another City commission, County committee, etc.) and speaking on behalf of the URAC (and not only as a Davis resident), support of that action must be by URAC majority.
9. Members of inter-jurisdictional bodies and active subcommittees may request time to provide short summaries or verbal updates on on-going work during the Commission and Staff Communications item on the regular agenda. Should the Subcommittee request Commission attention, analysis, input or direction, a regular agenda item is required.

Updates presented to the Commission may be provided in verbal, or written form. Summaries of written reports of the updates received by the Commission in advance of the meeting will receive a time allocation of up to 10 minutes for discussion. Otherwise, the time allocation will be 5 minutes, including questions and answers. The commission may decide to allocate additional time at the end of the regular agenda should the update require more discussion.

Items for action presented to the Commission will be agendaized consistent with standard procedures for all regular items. A report is required for a regular item.

COMMISSIONER ORIENTATION PACKET

PREPARATION MATERIALS FOR NEW COMMISSIONERS

GENERAL PURPOSE ORIENTATION AND UTILITY SUMMARIES

Commission Handbook

The current version of the commission handbook can always be found at:

<https://www.cityofdavis.org/city-hall/commissions-and-committees/commission-handbook>

The most recent version, updated in February 2020, is included at the end of this packet. The Handbook contains important guidance on Commission rules, roles, and legislative procedures, as well as an addendum containing information on the Brown Act. It is recommended that new and prospective Commissioners review the Handbook prior to attending the official first meeting of your term.

General Purpose/Orientation for the Utilities Commission

Purpose of the UC: The Utilities Commission is appointed by and acts as an advisory body to the City Council on the City's utility rates, assumptions and programs, and related utility matters as directed by the City Council.

Roles and Responsibilities: To recommend rate setting principles and reserve policies for Davis utilities; annual or multi-year adjustments to the City's utility rates; and technologies, pilot programs and initiatives for City Council consideration and potential staff evaluation.

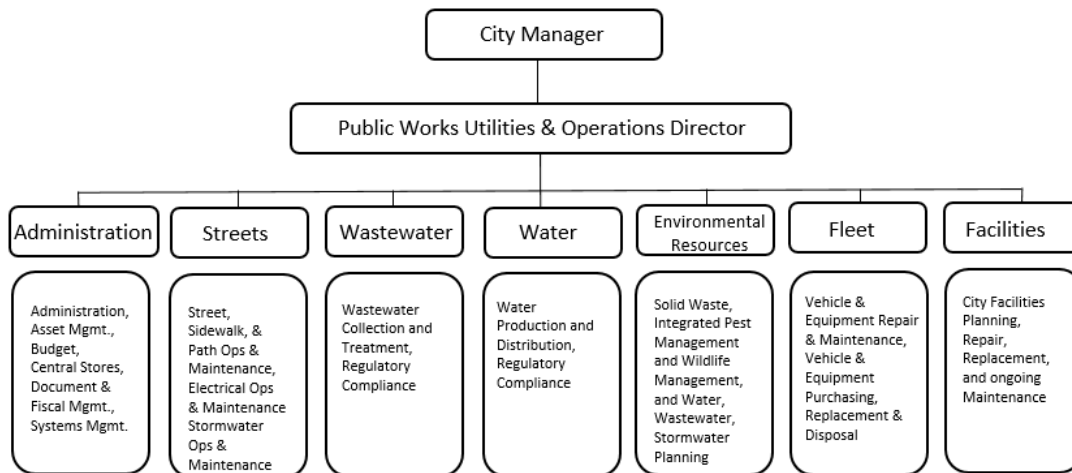
To consider applicable City goals and policies and incorporate them into utility policies; costs associated with providing utility services; utility customer needs and satisfaction with utility services; short and long term factors and consequences identified in rate studies; information provided by city utility managers, the City Council, and City advisory commissions, especially the Natural Resource Commission (NRC) and Finance and Budget Commission (FBC); current and potential future state regulations and policies, industry experience and best practices.

To evaluate and compare options to improve utility service and/or change the scope and methods of service delivery; social and economic equity effects of utility service and rate options on different segments of the Davis community; utility rates and rate structures of other communities to assist with informing policies for Davis; and long-term strategies to achieve service value and efficiency, resiliency, environmental sustainability, and other City objectives.

Established: (as a Commission) 2016. The Commission name and charge was updated in 2019.

Staffed by: [Stan Gryczko, Public Works Utilities & Operations Director](#)
SGryczko@cityofdavis.org
(530) 757-5686
Adrienne Heinig, Management Analyst
AHeinig@cityofdavis.org
(530) 757-5689

The Utilities Commission is supported by the Public Works Utilities & Operations Department.

Public Works Utilities & Operations Functional Org Chart:

Department Website: <https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations>

Areas of Focus

Functions of the city associated with the City's four major utilities - Water, Wastewater, Stormwater and Solid Waste. Primarily focused on structures and methodologies behind rates charged to customers for these utilities (all four are self-supporting enterprise funds), but the Commission will also focus auxiliary influences on the City's utilities, including regulatory changes, industry experience and best practices, utility policies, service improvements, service delivery and resiliency.

Commission Email Distribution List

Launched in February 2019, the distribution lists (for all Commissions) were created in order to:

- Provide an easily accessible communication tool
- Enhance civic participation in commission discussion/deliberation
- Increase transparency
- Comply with California Public Records Act requirements related to collecting, reviewing and disclosing records on private accounts that are regarding city business

This email address can be used to allow the community to contact an entire legislative body using a single address. The emails for each commission are posted on the City's website on each commission's information page. The Utilities Commission email address is uc@cityofdavis.org. There is no obligation for Commissioners to reply to emails received via the Commission address. The Commissioners are reminded that if they do reply, the reply comes from their email address (i.e. not from the Commission address) and staff liaisons should be included on all correspondence to ensure that appropriate records are kept.

For items to be distributed to the Commission internally (i.e. informational items from the Commission Chair to the Commission, or from commissioners to each other) it is preferred that

the messages are sent through the staff liaison for distribution, rather than via the group email address.

And as a reminder: do not use reply all at any time in Commission communications. This is to avoid actual, possible, or perceived serial meetings.

Utilities

While little connects the city's four utilities; Water, Wastewater, Solid Waste and Stormwater, they have some important commonalities. Each utility is operated as a self-supporting enterprise fund. Revenues for each are derived primarily from service charges, and must be adequate to fund the enterprise system's operating and capital programs, and debt service. Each fund is assessed in depth during cost of service studies conducted by third-party consultants, with staff and the UC on a roughly five-year cycle, and each fund with a conducted cost-of-service study is presented to the Commission each year for a financial check-up.

The utilities serve a City population of roughly 69,000. The Water and Wastewater utilities also serve areas outside of the City limits, including El Macero, North Davis Meadows, Willowbank, and other County Service Areas (CSAs).

Utilities Key Term to Know:

- **Proposition 218** - Passed in November 1996, Proposition 218 is also called the "Right to Vote on Taxes Act". It's a constitutional amendment which affects the ability of cities, counties and other local governments to levy and collect taxes, assessments, and *property-related* fees and charges. The Proposition 218 process is the guide for all rate-setting processes and sets the process each City is required to follow. Essentially, it requires *voter approval* prior the imposition or increase of general taxes assessments or user fees, except for certain utility services (water, wastewater, solid waste services). For those certain utility services that do not require voter approval, a notice is still required to be mailed to all ratepayers for a 45-day protest period, and charges are required to reflect the cost of providing the service, the adoption of utility charges are subject to majority *protest*, not voter *approval*. Stormwater utility charges currently fall into the category of required voter approval (more on that in the Stormwater section).

Rate Studies

While the Commission reviews all aspects of the City's utilities, the primary focus is to review the rate studies conducted by staff and the third-party consultant every five years. The Commission has established a process for each rate study (takes about one year) which is as follows:

1. Conduct a Special Meeting to review the background and relevant details of the utility.
2. Review draft Rate Study Request for Proposal for content and requirements, recommend adjustments/changes.
 - a. Recommend one commission member to participate in consultant selection process.

3. Review Scope of Work from selected consultant, recommend scope changes, and recommend approval of Scope of Work to Council.
4. Review cost of providing services (financial plan) outlining funding requirements of utility. Ask questions/provide feedback. No formal recommendation on needs of utility.
5. Review rate scenarios (developed per approved Scope of Work) developed after completion of financial plan. Recommend changes/modifications to scenarios. No formal recommendation.
6. Review draft cost of service report, including final rate scenarios. Recommend adoption or other action for Council consideration.

Each of the four utilities is outlined below in greater detail.

Layout of this document: Each section will include a definition of the utility, key terms to know, a description of how the rates are charged, a list of management plans or associated study documents (as applicable), any additional necessary descriptions of the service, and a “current events” section (updated when the document is updated) describing any recent events surrounding the utility.

SOLID WASTE (garbage, recyclables and organics)

Solid Waste Services: The City of Davis is responsible for providing solid waste services to the community, which is conducted largely by the City’s contract hauler (as waste collection services are under contract – the City does not have a solid waste utility). Outreach, education, enforcement and regulatory compliance is provided by City staff. The Public Works Utilities & Operations Department Solid Waste Diversion Program (hereafter referred to as the Diversion Program) is responsible for solid waste education and outreach to all businesses and residents within the city as required by state regulations, as well as enforcement of Chapter 32 of the City’s Municipal Code. Waste hauling is provided by an exclusive franchise agreement with Recology Davis for the collection of all solid waste within the city limits. This includes garbage, recycling, yard materials and organics collection, and street sweeping services.

Program Website: <https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations/solid-waste-and-recycling>

Solid Waste Key Terms to Know:

- **LITS** - “Loose in the Street” yard material collection, also called on-street yard material pile collection. The term came from the city’s consultant working on the cost of service for the Solid Waste Utility in 2018-19.
- **The “Claw”** - What community members call the piece of machinery that collects the yard material piles. Generally speaking, two types of equipment are in use when conducting on-street yard material collection; the “claw” and a rear loader truck to hold the material picked up by the “claw”.
- **Diversion Goal (75%/2020)** - California’s diversion goal to keep divertible materials out of the landfill. Associated with State Assembly Bill (AB) 341, which mandates recycling service for many businesses.

- **Davis Waste Removal/Recology Davis** - Our contracted waste hauler. Prior to April 2018, the city's solid waste hauler was Davis Waste Removal (or DWR). DWR (also a private company, despite the name "Davis") was in business for decades prior to the sale. The contract with Recology runs until 2027, with a 5-year automatic extension if the 75% diversion goal is met.
- **CalRecycle** – Abbreviation for the California Department of Resources Recycling and Recovery is the regulatory agency for waste hauling in the State.
- **SB 1383** - Also known as Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions, this Senate Bill (SB) has established targets for methane emissions reductions by focusing primarily on the disposal of organic materials. This bill sets targets for reductions of organic materials disposed of in landfills, requires disposed edible food recovery programs to be established by all jurisdictions, and requires enforcement and reporting on these requirements to demonstrate compliance. This bill contains significant, sweeping legislation that has changed the landscape of California waste services.
- **Dual-Stream** –The type of recycling collection system we have in Davis, where paper recyclables are collected separately from comingle (plastics, metals and glass) in order to keep the paper clean and for ease of sorting the materials. All recyclables are hand sorted at the Recology Davis recycling center on 2nd Street.

Solid Waste Rates: Charges are based on the subscription level size of the garbage cart, which includes the costs associated with recycling, yard materials and organics collection, and street sweeping services. Sample costs are included below for Single Family Customers. The current Proposition 218 Notices for the Solid Waste Utility are posted online here:

<https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations/solid-waste-and-recycling/solid-waste-rates>



Single Family Garbage Cart Size	Current Rate (Effective March 1, 2019)	Max. Rate Effective Jun 2020	Max. Rate Effective Jan 2021	Max. Rate Effective Jan 2022	Max. Rate Effective Jan 2023
35-Gallon	\$35.19	\$38.70	\$41.80	\$43.89	\$ 46.08
65-Gallon	\$ 38.95	\$ 42.85	\$46.28	\$ 48.59	\$ 51.02
95-Gallon	\$ 46.47	\$ 51.11	\$ 55.20	\$57.96	\$ 60.86

Management Plans/Studies

- Integrated Waste Management Plan. Completed in 2013. An assessment of current solid waste programs, alternative programs, and recommended programs along with the timeline for their implementation to move the City closer to zero waste. Updated Regularly.

- Solid Waste Rate Study. Completed in 2018. A cost of service analysis to bring rates in line with the actual cost of the service provided. Completed every five years.
- Organics Processing Facility Feasibility Analysis. Completed in 2019. An assessment of the feasibility of various organics processing scenarios for the diversion of organic waste from the Yolo County landfill.

Utility Detail

Waste Diversion Timeline: In 1989, the Integrated Waste Management Act (AB 939) was passed and enacted Public Resources Code (PRC) section 41780, which required a 25% reduction of solid waste disposal by cities and counties by 1995 and 50% by 2000. The Act required waste diversion from landfill or transformation facilities through source reduction, recycling, and composting activities. Under AB 939, diversion was calculated from a base year, where the State calculated: 1) how much waste was prevented, 2) how much waste was recycled and composted; and 3) how much waste was disposed. The total of these three activities was considered the total waste generated. The total materials prevented, recycled and composted were considered diverted and the tons landfilled were not diverted. This was the process that was used to determine whether the City achieved the 50% diversion mandate.

The City easily met the 1995 goal of 25% diversion, but meeting the 2000 goal was not as easy. In 2000, California's waste reporting system was based on estimates of population, employment and taxable sales, not on the amount of trash disposed. Due to a surging economy, high levels of business activity and construction, achieving a 50% diversion rate was more difficult for Davis. Diversion rates did not include the tons of yard materials that were collected each week for composting by the waste hauler Recology — the State's calculations did not consider these materials "diverted" using their reporting procedures. The City did achieve the State-calculated 50% diversion in 2001.

In 2007, SB 1016 was passed, changing the way the State Department of Resources, Recycling and Recovery (CalRecycle) measured waste diversion. The goal of the new per capita disposal measurement system was to make the AB 939 process of goal measurement simpler, timelier, and more accurate. SB 1016 changed to a disposal-based indicator—the per capita disposal rate—which uses only two factors: a jurisdiction's population (or in some cases employment) and its disposal as reported by disposal facilities. The AB 939 50% solid waste disposal reduction requirement is now measured in terms of per-capita disposal expressed as pounds of waste generated per person per day, or pounds per employee per day. The focus is on program implementation, actual recycling, and other diversion programs instead of estimated numbers.

In 2011, the governor signed AB 341, increasing the current State goal from 50% diversion to 75% by 2020. AB 341 also created the Mandatory Commercial Recycling law, which requires that all businesses that generate four or more cubic yards of waste each week and all multi-family communities with five or more units to arrange for recycling service. Shortly following this, the Mandatory Commercial Organics Recycling Law (AB 1826) in 2014 required many businesses to recycle their organic waste as well (food-soiled paper, food scraps and yard materials).

All Davis businesses that fall under the Mandatory Commercial Recycling and the Mandatory Commercial Organics Recycling Law are already required to recycle under Chapter 32 of the Davis Municipal Code. Davis Diversion Program staff works with Recology to perform yearly compliance reviews as required by the State. These reviews are part of the annual report that is submitted to CalRecycle.

SB 1383: Brand new program, outreach, monitoring, and reporting requirements for cities are included in the regulations created by SB 1383. These regulations, which are scheduled to go into effect January 2022, are still being developed by CalRecycle and are expected to be finalized in late 2020. They establish methane emissions reduction targets as part of a statewide effort to reduce emissions of short-lived climate pollutants in various sectors of California's economy, focusing on landfill organics material emissions. Among other things, these regulations require cities to establish, provide widespread outreach for and implement extensive monitoring of organics collection programs.

As of August 2020, the City is in compliance with all current State-mandated waste diversion regulations.

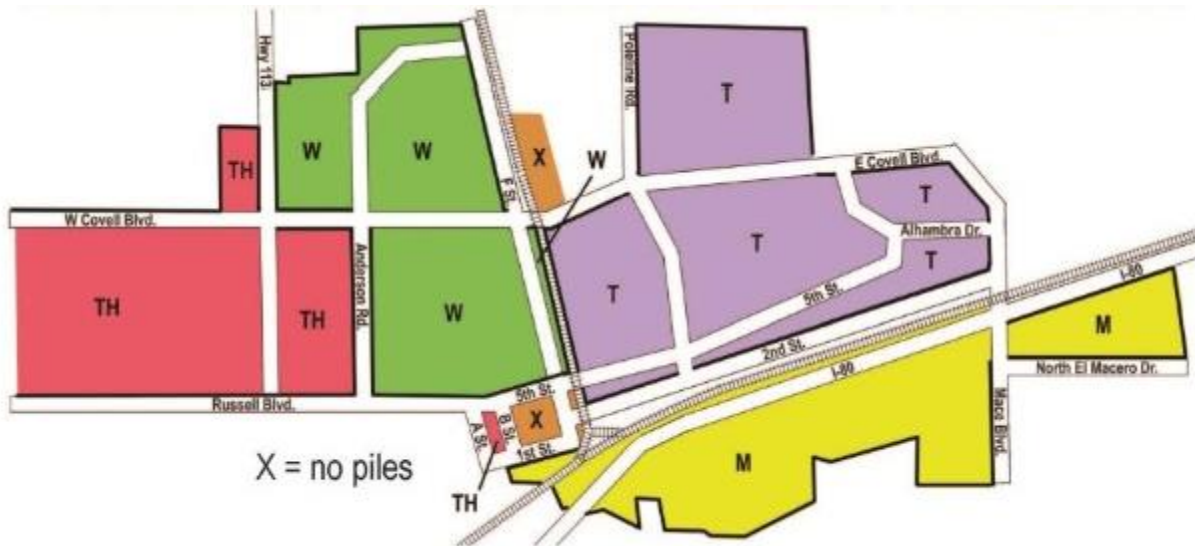
Recycling: The City's Diversion Program is responsible for providing recycling education and outreach to the City's solid waste customers. The City has an exclusive franchise waste agreement with Recology Davis to collect recyclables. The Diversion Program encourages the 5 R's: Reduce, Reuse, Recycle, Rot and Rebuy. The Diversion Program also operates the annual Apartment Move-Out Waste Reduction Program each year in coordination with the city's waste hauler, and apartment complexes during "turnover" in August (when area students graduate from the University and leave, and new students move in before classes start in September) to keep as many recyclable and re-useable items out of the trash and out of the landfill.

Organics: In July 2016, the City introduced a weekly organics collection service, allowing food waste, yard materials and other organics to be collected each week via the new brown-lidded organics carts. Residents and businesses in Davis also have access to food scrap recycling service through Recology Davis. This organics program will help the City achieve its 75% waste diversion goal (see Waste Diversion) and was a key element of the city's Integrated Waste Management Plan. With the introduction of SB 1383, all municipalities in California will be required to have mandatory organics collection programs.

On-Street Yard Material Collection: On-street yard material collection is offered seasonally in Davis. The most recent changes to the schedule occurred in 2019. The current schedule includes:

- Fall and Winter Collection Service: Beginning with the third Monday in October and ending in late February, there will be 10 on-street yard material pile pick-ups, every other week.
- Spring Collection Service: There will be one pick-up the week of the first Monday in May.

Collection during the summer months was eliminated.



Neighborhood-specific email alerts for collection day notifications. City customers can sign up for the notifications via the City's eNotification system or download a calendar that will auto-populate reminders for when yard materials can be placed in the street for collection.

Solid Waste Current Events

Solid Waste Rate Increases: The City has experienced several transformations in its management of solid waste over the past four years due to changes in State regulations and diversion programming. Modifications included the addition of the organics program, implemented in 2016 to help the City achieve its 75% waste diversion goal. These modifications to the program, combined with several unexpected increases in the landfill's solid waste disposal costs (tipping fees for trash and compost) and other overextended program operating costs necessitated that the City conduct a study to update its solid waste service charge structure. The purpose of the study was to create a financial management plan for solid waste services for the coming decade. The City of Davis engaged R3 Consulting Group, Inc (R3), who produced a 10 Year Financial Plan with 5- Year Service Charge recommendations to address the City's need to raise revenue over time to ensure that revenues from solid waste service charges are sufficient to cover projected expenses for solid waste services. The Solid Waste Rate Study (linked) provided direction on how best to ensure fiscal sustainability for the Solid Waste Program moving forward. The recommended rates went into effect on March 1, 2019.

Organics Recycling: As part of the SB 1383 regulations, all businesses, schools, and local government agencies will be required to have a recycling and organics bin next to every single trash bin (except in restrooms). The regulations also require that all trash, recycling and organics collection bins statewide be the same color (grey, blue and green, respectively) and have clear labeling of what can and cannot go into each bin. Due to the new regulations, CalRecycle anticipates that local agencies will incur approximately \$1.3 billion in costs for education, enforcement, contamination monitoring, reporting, capacity planning, and procurement. CalRecycle estimates the direct costs to individuals to be about \$17 per household per year after full implementation. At this point the state is not offering significant funding assistance, and anticipates that these costs will primarily be borne by ratepayers in the form of increased waste

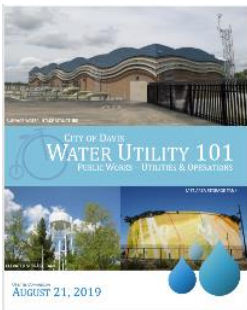
collection rates adopted as a part of the local agencies waste collection service. Fortunately, due to the implementation of the City-wide Organics Collection Program in 2016, the City is already on-track with some of the new requirements. City staff has taken an active role in the rulemaking process of these regulations, submitting 5 comment letters to CalRecycle, requesting modifications to the regulations. CalRecycle has been receptive to some of the comments received, but the regulations are not expected to be finalized until the end of 2020, giving the City only one year to prepare for the new regulations before they go into effect in January 2022. City staff plan to hire a consultant to review the City's readiness for SB 1383 regulations and provide a roadmap with options to achieve compliance.

WATER

Water Services: The City provides water service to a population of approximately 71,000, as the city provides water to residents within the city boundaries, and residents in surrounding County Service Areas (CSAs) including El Macero, Willowbank, and others.

Historically, the Davis water system relied solely on groundwater. In 2016 the City began receiving surface water, and the City aims to utilize its full allotment of surface water and supplements with groundwater as necessary, usually during the high demand months between April and October. The City participates in the Woodland Davis Clean Water Agency JPA to operate the Regional Water Treatment Facility with the City of Woodland and UC Davis.

Rates for the city's water utility were last adjusted in 2013 (for a five-year Proposition 218-noticed period) with the last adjustment in January 2019.



In 2019, as part of the Rate Study process established by the Utilities Commission, City staff from the Water Utility presented a closer look at the utility operations, management, regulatory compliance and future planning efforts. Part of this effort included the development of a Water Utility 101 document, available online.

Program Website: <https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations/water>

Water Key Terms to Know:

- **CCF** - Hundred cubic feet. Water volume is measured at the meter in cubic feet. The City's financial system currently bills in increments of hundred cubic feet (1 CCF = 748 gallons).
- **WDCWA** - Woodland Davis Clean Water Agency, the JPA that operates the Regional Water Treatment Facility built by the cities of Woodland and Davis. UC Davis is also a partner to this agency.

- **JPA** - Joint Powers Authority. This is used when agencies like cities, counties and/or other entities (such as a university), work together to operate a program or service that benefits each of the agencies participating in the JPA.
- **AMI** - Advanced Metering Infrastructure. In 2019, the city completed a large project to install new meters city-wide. The meters include AMI which uses a low-powered communication device to transmit hourly water usage information over a secure radio network.
- **AquaHawk** - The city's online customer water use portal. Allows customer to view their daily and hourly water usage data.
- **CSA** - County Service Area, specifically the Yolo County Service areas that surround the city of Davis, including El Macero, Willowbank, North Davis Meadows, and other locations that are not part of the City of Davis.
- **Contaminants/Constituents** - Substances picked up by water as it travels over the surface of the land or through the ground. Water dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up other substances resulting from the presence of animals or from human activity.

The Davis Woodland Water Supply Project (Or How WDCWA Was Developed): The Davis Woodland Water Supply Project included the construction, operation and maintenance of a water intake facility, a water treatment facility and pipelines. With a decline in groundwater quality, increasingly strict water quality regulations, and in keeping with the goals to build and maintain a resilient and sustainable water system, Davis and Woodland partnered together to develop the supply of surface water from the Sacramento River. The Regional Water Treatment Facility (operated by WDCWA) can provide up to 10.2 million gallons per day (MGD) of surface water from the Sacramento River to Davis water customers (and up to 30 million gallons of water per day total). The facility was built and is operated in conjunction with Reclamation District (RD) No. 2035 and replaced RD 2035's old intake facility. Davis and Woodland continue to independently operate their individual water distribution systems, and the partners for this project (Davis, Woodland and UC Davis) each fund a share of WDCWA operations. More information about the Regional Water Treatment Facility is available at www.wdcwa.com.

WDCWA's water right permit authorizes it to utilize up to 45,000 acre feet of water per year. However, diversions will be limited during summer months and other dry periods. During these times, WDCWA will utilize up to 10,000 acre feet of water under a senior water right purchased from the Conaway Preservation Group.

Water Rates: The water utility rates include fixed and variable charges made up of a base rate based on meter size and a per CCF usage rate, with a cost based on user classification and consumption data from the meter.

The rate structure for water in Davis is highly volumetric, meaning the amount charged monthly depends more on the amount of water used that month than on the fixed base fee.

		Rates adopted by City Council September 16, 2014			
		Rates effective 1/1/2016 Shown on the March 2016 City Service Bill	Rates effective 1/1/2017 Shown on the March 2017 City Service Bill	Rates effective 1/1/2018 Shown on the March 2018 City Service Bill	Rates effective 1/1/2019 Shown on the March 2019 City Service Bill
Base Rate \$/meter size	5/8" or 3/4"	\$9.87	\$10.97	\$12.20	\$13.07
	1"	\$15.00	\$16.66	\$18.53	\$19.86
	1 1/2 "	\$26.66	\$29.71	\$33.15	\$35.57
	2"	\$42.15	\$46.91	\$52.28	\$56.06
	3"	\$76.81	\$85.95	\$96.25	\$103.49
	4"	\$117.47	\$131.59	\$147.49	\$158.65
	6"	\$227.15	\$254.96	\$286.31	\$308.27
	8"	\$357.45	\$401.67	\$451.53	\$486.41
		Rates for Metered Water Charges (\$/ccf)			
Single Family Residential Rate (\$/ccf)		\$3.44	\$3.98	\$4.61	\$5.01
Multi Family Residential Rate (\$/ccf)		\$3.47	\$4.02	\$4.66	\$5.07
Commercial Rate (\$/ccf)		\$3.34	\$3.87	\$4.47	\$4.88
Irrigation Rate (\$/ccf)		\$4.26	\$4.93	\$5.71	\$6.23

Sample Calculations: For a sample single-family residence, with a 3/4" size meter:

If a customer uses 6 CCF of water (single-family customer average water use for February 2020), then their water bill would be calculated as:

- \$30.06 (6 CCF x \$5.01/CCF) + \$13.07 (base rate of the 3/4" size meter) = \$43.13

If customer uses 17 CCF of water (single-family customer average water use for June 2020), then their water bill would be calculated as:

- \$85.17 (17 CCF x \$5.01/CCF) + \$13.07 (base rate of a 3/4" size meter) = \$98.24

Details on the meter size charges and user classifications are online:

<https://cityofdavis.org/city-hall/finance/city-services/utility-rates/schedule-of-base-rate-and-meter-retrofit-charges>

Management Plans/Studies

- Urban Water Management Plan. Completed in 2015. Every five years all urban retail water agencies with over 3,000 connections are required to submit an updated Urban Water Management Plan (UWMP) to the Department of Water Resources (DWR). Within UWMPs suppliers must:
 - Assess the reliability of water sources over a 20-year planning time frame.
 - Describe demand management measures and water shortage contingency plans.
 - Report progress toward meeting water use efficiency targets.
 - Discuss the use and planned use of recycled water.
- Integrated Water Resources Study. Completed in 2013. The purpose of the Integrated Water Resources Study was to identify potential water resource options available to the City and their associated costs. The study includes options to reduce potable water use or augment existing potable water supplies.
- Water Rate Study Update. Completed in 2017. The City's current rate structure is a variable/fixed rate structure where the majority of revenue is generated by the volumetric rate instead of the fixed rate or service charge. The City is currently undergoing a water rate study this fiscal year (2020-2021) to look at water rates needed to support the utility moving forward.

- Aquifer Storage and Recovery (ASR) Feasibility Study. During the formation and planning for Woodland Davis Clean Water Agency, a preliminary environmental review was completed to allow the City to use ASR (the injection of treated surface water into an underground aquifer for the purposes of storage) as an option to provide sustainable water supplies. A feasibility study is currently being conducted to develop this option further by determining if ASR is a suitable option to expand the City's potable water portfolio, and provide the potential to augment existing water storage capabilities to enable the City to more fully use its' existing surface water rights.

Utility Detail

The City currently has 5 deep aquifer wells and 4 intermediate wells in operation. The majority of groundwater supplied as drinking water comes from the deep aquifer wells. The intermediate wells are typically only operated to ensure they are exercised properly and as required for water quality testing. In 2015, prior to the introduction of surface water, the city had 20 wells, 15 intermediate wells and 5 deep aquifer wells. In 2019, approximately 87% of the city's water was surface water with the remainder primarily coming from the city's deep wells. The monthly average of surface water ranged from 79% (summer months) to 99% (winter months).

Water Quality: Water delivered by the Regional Water Treatment Facility and treated water from the City's wells is potable water, also called 'drinking water.' As befits such a widely-consumed resource (which is used for drinking, to gardening, washing, filling pools, etc.) there are a number of state-regulated tests on water quality that the City conducts. Since the inclusion of surface water into the City's system, the quality of the drinking water has significantly improved. Surface water contains very few metals and is much softer than local groundwater.

The table below is a comparison of selected constituents to show how the quality of water has changed from 2015 (solely groundwater) to 2019 (current water supply of both surface water and groundwater).

Constituent	Units	2015		2019	
		Weighted Average	Range	Weighted Average	Range
Alkalinity	ppm	363	200 - 500	71.5	54 - 490
Bicarbonate	ppm	349	190 - 500	87.2	66 - 600
Boron	ppb	907	500 - 1100	<100	<100 - 930
Calcium	ppm	36	15 - 75	12.7	12 - 51
Chloride	ppm	53	17 - 200	4.7	1.1 - 74
Conductivity	µS/cm	929	480 - 1600	240.7	190 - 1300
Copper	ppb	<50	<50 - 120	<50	<50 - <50
Hardness	ppm	306	66 - 740	61.9	55 - 510
Magnesium	ppm	52	7 - 130	7	6.1 - 100
Selenium	ppb	6.4	<2 - 35	<2	<2 - 19
Sodium	ppm	104	58 - 110	25.5	17 - 110
Total Dissolved Solids	ppm	576	300 - 1100	128.9	96 - 720

The City is required to monitor its source water and treated drinking water for Title 22 compliance, as mandated by the California Code of Regulations. The City operates its water system under Permit 01-09-17-PER-006 and must follow the requirements of the permit to ensure delivery of safe drinking water. As such, the City must sample certain constituents regularly to ensure safe drinking water is delivered. These results are reported to the State by the 10th of the following month. WDCWA is required to sample and ensure the treated surface water meets all state and federal drinking water regulations prior to delivery to Davis.

The City collects samples on a weekly, monthly, quarterly, and annual basis depending on the constituent and sampling program. Typically, the City collects:

- Weekly distribution system bacteriological samples
- Monthly distribution system monitoring samples for hardness and boron
- Quarterly groundwater well samples and distribution system disinfection by-products samples
- Annual groundwater well samples and distribution system asbestos samples
- Residential Lead and Copper Rule samples tri-annually

The City collects samples beyond what is required by State and Federal drinking water standards in order to better understand the quality of water being delivered. The City releases an Annual Water Quality Report every year in the spring, as required by the US Environmental Protection Agency and the California State Water Resources Control Board. View the current and past water quality reports at [CityofDavis.org/WaterQuality](https://www.cityofdavis.org/WaterQuality).

The City receives and responds to a variety of water quality complaints and questions. These range from questions or comments about discolored water or changes in the taste and odor of drinking water, and include general questions regarding water hardness and water quality testing results. A Frequently Asked Questions (FAQs) webpage was developed to answer common questions that residents tend to ask regarding water quality. View FAQs regarding general water questions and common changes to water quality at <https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations/water/water-quality/frequently-asked-questions>.

One of the most frequent questions the City receives about the change in water quality (since the introduction of surface water) relates to water hardness. The level of water hardness has decreased significantly with the delivery of surface water. In 2015, when the City supplied only groundwater, the weighted average for hardness was 306 parts per million (ppm) or 18 grains per gallon (gpg). In 2019, the City supplied 87% surface water and 13% groundwater, and the weighted average for hardness in 2019 was reduced to 62 ppm or 3.6 gpg. The City collects monthly distribution system samples at four locations throughout town in order to better understand the current level of hardness.

Water Use Efficiency Regulations: In 2018, Governor Brown signed SB 606 and AB 1668 which are two accompanying bills setting long term water use efficiency requirements. The bills implement the framework established by EO B-37-16, titled "Making Water Conservation a

California Way of Life,” which was released on April 7, 2017. Key provisions of the new regulations include water use efficiency standards and objectives, urban water management planning, and agricultural water management planning. The State Water Board is expected to adopt these standards by regulation no later than June 30, 2022. Beginning November 2023, each urban retail water agency will calculate and report its water use objective annually, which will be the sum of the following:

- Aggregate residential indoor use
- Aggregate residential outdoor use
- Aggregate CII (commercial, industrial, institutional) outdoor use
- Aggregate water loss
- Aggregate variances (if applicable)
- Bonus incentive for potable reuse water

The following information will be used in the calculation of the urban water use objective:

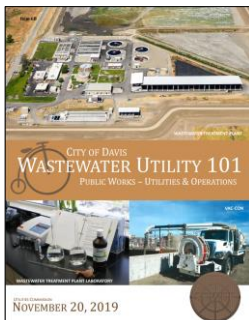
Standard	Description	Timeline
Indoor water use (phased in)	55 gallons per capita day (gpcd)	Until 1/1/25
	52.5 gpcd	1/1/25 – 1/1/30
	50 gpcd or DWR standard (whichever is higher)	After 1/1/30
Outdoor residential water use and outdoor CII water use	<ul style="list-style-type: none"> • Will incorporate MWELO (Model Water Efficient Landscape Ordinance) principles • Applies to irrigable lands • State will provide required landscape area data • Focus on residential/metered irrigation 	To be established by the Department of Water Resources (DWR) and adopted by the State Water Resources Control Board (SWRCB) by 10/1/21
Water Loss	<ul style="list-style-type: none"> • Will be based on SB 555, validated water loss audits • Performance standard for aggregate water losses 	Potential adoption in November 2020
Variances	<ul style="list-style-type: none"> • Must include a threshold of significance • Potential examples include evaporative coolers, livestock, seasonal populations and sustaining wildlife 	Will be recommended for adoption by DWR by 10/1/21
Bonus Incentive	Incentive of up to 10% of the urban water use objective for direct and indirect potable reuse water	

Additional information can be found in the primer on “Making Water Conservation a California Way of Life” released in November 2018, [Link to PDF Version](#)

AquaHawk Customer Water Use Portal: AquaHawk is the City of Davis' online customer water use portal. The portal allows commercial and residential customers to view their hourly water consumption, manage water usage and set usage alerts. The ability to set a usage alert is one of the primary benefits of the water use portal. Customers can set an alert set to be notified of continuous water usage over a 24-hour time period or less. Additional information on the online customer web portal can be found at <https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations/water/water-conservation/water-use-portal>

WASTEWATER

Wastewater (sewer) services: The Wastewater Utility operates and maintains the City's sanitary sewer system in accordance with federal, state, and local regulations to protect public health and ensure the efficient, economical, and environmentally sound collection, treatment, and disposal of the City's treated wastewater. This includes the operation and maintenance of the City's Wastewater Treatment Plant, the Restoration Wetlands adjacent to the plant, the administration of the city's permit (National Pollutant Discharge Elimination System - NPDES permit) to operate the plant, and the industrial pretreatment program. This also includes the operation and maintenance of the special districts of El Macero and North Davis Meadows (part of the County Service Area outside of Davis city limits), and the education and outreach associated with pollution prevention (with pretreatment and stormwater) and wildlife habitats.



In 2019, as part of the Rate Study process established by the Utilities Commission, City staff from the Wastewater Utility presented a closer look at the utility operations, management, regulatory compliance and future planning efforts. Part of this effort included the development of a Wastewater Utility 101 document, available online.

Program Website: <https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations/wastewater>

Wastewater Key Terms to Know:

- **Wastewater** – Also known as sewer water, this is used water from indoor drains, sinks, showers, toilets, etc., that flows to the Wastewater Treatment Plant.
- **NPDES** - National Pollutant Discharge Elimination System permit. The City holds this permit from the California Water Board (specifically the Central Valley Regional Water Quality Control Board) to discharge treated water from the Wastewater Treatment Plant. The permit includes all discharge requirements the city operates under, and enforcement and monitoring actions required to keep the plant in operation. The most recent adoption was completed in December 2018, and went into effect in February 2019. The permits are effective for five years.

- **Pretreatment** - Pretreatment is exactly what it sounds like, managing the wastewater before it gets to the plant. There is a great deal that the community can do to assist the operations of the plant, and help to avoid clogged pipes, or sewer backups, or undue strain on the plant itself, through simple actions taken before wastewater enters the system.
- **Collections** - Collections, or wastewater collections, (also called the sewer system) is the name provided for the system of gravity pipes, maintenance holes, tanks, lift stations, etc. that gather wastewater from residential and commercial customers and conveys the flow to the Wastewater Treatment Plant. It is also the term used to describe the team that works to maintain the system.
- **Effluent** - treated wastewater that leaves a wastewater treatment plant.
- **Influent** - wastewater entering a wastewater treatment plant.

Wastewater Rates: Wastewater rates (also called Sanitary Sewer, or Sewer rates) are a combination of fixed and variable charges. Fixed charges include the base rate and unit cost. Variable rates are based on each customer's average winter water use (water used from November to February) each year.

Residential	Monthly Per Unit Rate	Volume Rate	Monthly Base Rate
Single Family	\$18.26	\$3.13	\$3.94
Condominium	\$12.46	\$3.13	\$3.94
Duplex	\$14.22	\$3.13	\$3.94
3 Units	\$15.02	\$3.13	\$3.94
4 Units	\$15.32	\$3.13	\$3.94
5 or more Units	\$12.88	\$3.13	\$3.94
Mobile Home	\$12.85	\$3.13	\$3.94
Churches, Schools and Daycare	N/A	\$4.69	\$3.94
Office	N/A	\$4.53	\$3.94
Restaurants	N/A	\$8.12	\$3.94
Industrial	N/A	\$6.74	\$3.94

Residential Sanitary Sewer Monthly Cap: If winter water use exceeds the maximum CCF listed below, it is capped at this amount.

Customer Category	Monthly Cap (CCF)
Single Family	24
Condo	19
Duplex	36
Triplex	56
Quadplex	76
5+ units	19 CCF/unit
Mobile Home Park	19 CCF/unit

Sample Calculation: a single-family home with 8 CCF average winter water use:

Monthly Per Unit Rate + Volume Rate + Monthly Base Rate = Total Wastewater Rate
 (volume rate x average winter water use)
 $\$18.26 + (\$3.13 \times 8 = 3.13 \times 8 \text{ CCF}) + \$3.94 = \$47.24$

Management Plans/Studies

- Wastewater Comprehensive Sewer Rate Study Report. Completed in 2017. Conducted as an update to the Wastewater Rate Study completed in 2015, to examine the revenue and expenditures of the wastewater utility and examine the allocation of cost by user classes, to review for changes and necessary updates after the completion of the upgrades to the City's wastewater treatment plant. While rate increases were not recommended (based on existing fund balance for the Wastewater Fund), cost allocations to customers were adjusted to account for the higher cost of treating higher strength effluent.
- Near-Term Recycled Water Master Plan. Completed in 2018. As a result of the upgrades to the City's Wastewater Treatment Plant, the plant is capable of producing Title 22 disinfected tertiary recycled water (meeting State requirements for unrestricted beneficial reuse). Staff have been working on the development of a recycled water pump station and associated infrastructure, to potentially provide recycled water to the Treatment Plant and nearby facilities. The Plan evaluates the potential for developing recycled water for other beneficial uses, including agricultural irrigation reuse, municipal irrigation use, habitat creation and other non-irrigation uses.
- Sewer System Management Plan (SSMP). Updated every 5 years. The SSMP is a collection of the policies, procedures and maintenance of the City's wastewater system. This plan includes the City's operations and maintenance program, the overflow emergency response plan, the system evaluation and capacity assurance plan, and program audit summaries, among many other components.

Utility Detail



Plant upgrade: From 2013-2018, the Wastewater Treatment Plant was upgraded in order to meet State and Federal regulatory discharge requirements. The upgrade was accomplished in two phases: The Rehabilitation and Replacement (R&R) Phase and the Secondary and Tertiary Improvements (STI) Phase. The planning for upgrading local wastewater facilities began in 2001 when the Central Valley Regional Water Quality Control Board initiated new water discharge limits.

The upgraded facility has allowed the city to move wastewater treatment from a land-based system, with an average treatment time of 40 days, to an activated sludge system with an average treatment time of 23 hours. This change has also significantly improved effluent quality. The new system can treat an average of 6 million gallons a day. The improvements also included a berm built to surround the plant to protect it from flood waters.

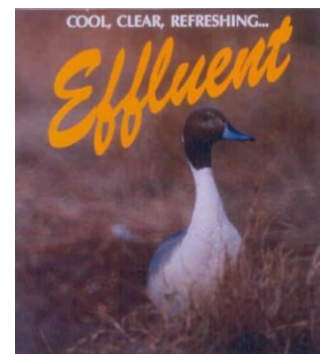
Introduction of average calculation and caps: In 2007 and 2008, following the recommendation of the Natural Resources Commission (NRC), the City implemented a new sewer rate structure based on average winter water use primarily for the purpose of improving equity among residential customers. This approach better characterized the costs of service, for example, for a single-person household vs. one with four or five occupants, as well as non-residential customers. Subsequent to this, the City concluded that more than 1,200 residential customers had winter water consumption that resulted in wastewater rate charges that were too high and, therefore, decided to implement a “cap” of twice the normal flat-rate charge.

Wastewater rate allocation: In 2017, the City completed significant upgrades to the Wastewater Treatment Plant. At the completion of the project, the City’s wastewater enterprise fund had a healthy reserve fund balance, with a projected year-end balance of more than \$33 million at the end of Fiscal Year 2016/17, and city staff determined, during an update to the cost of service study on the utility, that there was no need to increase the amount of rate revenue collected for the next five years. However, as noted below, the study concluded that there should be changes in how costs are allocated to customer classes and total charges paid by those customer classes.

Costs of Treatment Have Changed – Due to the type of treatment processes used at the new treatment plant, costs for strength-related wastewater treatment have increased. This changed how costs were allocated to customer classes. While sewer rates have historically reflected cost allocations based almost entirely on the effluent (flow) that customers generated, the adjusted rates take into account the customer classes with higher strength effluent (i.e. those customers that send more material with the wastewater to the Plant for treatment), and are calculated to ensure that each customer class pays rates based on the cost of the treatment they require. Restaurant wastewater rates in particular have increased in cost, while residential rates are slightly lower than they had been due to this difference in the strength of effluent.

Impacts on Customer Bills – Even though the total amount of revenue collected from customers did not increase and the basic rate design did not change, the rates did affect individual customer bills. Costs have shifted slightly from low- and average-strength customers towards higher strength customers, such as restaurants. However, individual customer bills still reflect their specific average winter water use.

Davis Wetlands: Adjacent to the Wastewater Treatment Plant are 400 acres of the City’s Wetlands Project, which is part of an effort across the Central Valley to preserve and restore native habitat and wildlife. The wetlands restoration was completed in 1998, recovering historical habitat and re-establishing wintering grounds for waterfowl and migratory birds on the Pacific Flyway. The area is largely marshland, restored with treated water from the Wastewater Treatment Plant, and is monitored to ensure quality.



STORMWATER

Stormwater services: The Stormwater Utility, (also sometimes called Storm Sewer), operates and maintains the City's stormwater infrastructure to ensure stormwater is collected and discharged in accordance with federal, state, and local environmental regulations while protecting life and property from flooding. The operation of the program includes the maintenance of the stormwater conveyance system throughout the city, the operation and maintenance of stormwater pump stations located throughout town, the administration of the Stormwater Quality Management program, wildlife habitat management, and outreach and education associated with stormwater quality and wildlife. The program also assists with the Federal Flood Insurance Program.



Stormwater is the water from precipitation that flows across the ground and pavement when it rains. Stormwater should mostly be rain water, but as it runs off your roof, yard, driveway, and any impervious surface, it can pick up dirt, debris, animal waste, oil, gas, fertilizers, pesticides, and other materials in its path.

Impervious surfaces, such as roads, parking lots and driveways, prevent stormwater from being absorbed into the ground. Instead, stormwater runs off into the storm drain system. Because more stormwater runs off impervious surfaces, developed areas can experience local flooding. The increased quantity of stormwater runoff can also cause stream banks to erode and increase the amount of sediment in water bodies.

Stormdrains lead directly to Davis ponds, creeks and wetlands. Unlike sanitary sewers that direct water to a wastewater treatment facility before being discharged to a local water body, stormwater is discharged untreated. Any pollutant that enters the stormdrain system is discharged mostly untreated into the waterbodies we use for swimming, fishing, and providing drinking water, and can have adverse effects on aquatic life and people. Only rain water belongs in a stormdrain.

Program Website: <https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations/stormwater>

Stormwater Key Terms to Know:

- **Pump Station** - Stormwater pump stations protect urban areas by pumping excess water from rain or storm events away from streets and sidewalks and into the stormdrain system, to prevent flooding.
- **MS4 General Permit** – The MS4 General Permit regulates the operation of each stormwater permittee with the State. Davis is a Phase II permittee, which applies to stormwater discharge requirements for cities with populations between 25,000 and 100,000. The Phase II Small MS4 General Permit provides the regulations and standards

for all land uses and discharger's activities (including municipal activities) within the City's boundaries.

- **BMPs** - Best management practices. Guidance developed by state agencies and businesses to comply with State regulations.
- **Trash Amendments** - Amendments to the MS4 General Permits assigned to agencies statewide with regulations aimed at reducing the amount of litter entering the stormwater system, requiring the full capture of all litter 5mm in diameter (the size of a cigarette butt) or larger by 2030.
- **Litter** - waste (trash or recycling) that is not contained in a waste bin.
- **SB 231** - Senate Bill 231, passed by the California Senate in 2017, changed the definition of "sewer" in Proposition 218 to include stormwater systems. If upheld in court cases challenging this action, it would mean that Stormwater rates could be set in the same fashion as Water, Wastewater and Solid Waste rates, with a majority protest hearing.

Stormwater Rates: In the City's current utility rates, there are two charges that fund the stormwater utility: Storm Sewer and Drainage. The rate structures for both of which have been in place and unchanged since the 1990s. Both of these fees are calculated based on a monthly fee per square foot of each parcel. Only one line appears on customer bills for both of the rates.

Storm sewer rates pay for the operations and maintenance of the detention ponds, the conveyance channel, the wetlands, sampling and testing of stormwater, studies, reporting, and permitting. Vacant parcels are exempt from the storm sewer water quality charge.

Drainage rates are used for the acquisition, construction, reconstruction, maintenance and operation of storm drainage water systems and related facilities. Open space and agriculture parcels are exempt from drainage rates. Drainage fee can increase 3% each August, unless waived by City Council resolution.

Storm Sewer Rate		Drainage Rate	
Land Use	Monthly Rate per Sq. Ft. Lot Size	Land Use	Monthly Rate per Sq. Ft. Lot Size
Single-family dwelling unit through quadplex dwelling unit	\$0.0002321	Single Family home, condo or duplex	\$0.000544
Multi-dwelling units, 5 or more	\$0.0004643	Multi-family (3 or more units)	\$0.000698
Mobile home unit	\$0.0004643	Mobile Home Dwelling Units	\$0.000544
Churches	\$0.0004643	Commercial and Commercial	\$0.000971
Private day care and Group Living	\$0.0002321	Open Space and Irrigation	\$0.000282
Commercial	\$0.0004643	DJUSD Schools	Currently Exempt
Industrial	\$0.0008357	Private Day Care	\$0.000282
Open space and irrigation	\$0.0002321		
Agriculture	\$0.0009284		

Sample Calculation: calculated based on the square footage of each property:

Example: Single Family home on a 5,800 sq. ft. lot

Storm sewer Rate: $5,800 \times \$0.0002321 = \1.35 per month

Drainage Rate: $5,800 \times \$0.000544 = \3.16 per month

Management Plans/Studies

- Stormwater Management Plan (SWMP). Updated annually. To address stormwater within the City's jurisdiction. The SWMP addresses activities conducted in the City that are potential sources of pollutants in stormwater.
- Stormwater and Sewer Stations Assessment. Completed in 2016. The stormwater utility has a significant amount of deferred capital improvement projects. In 2016, the City worked with a consultant to complete an assessment of the stormwater and sewer stations, to identify the priority projects for the stormwater utility, and recommendations for replacements and upgrades. A few stations have been identified as operating past their useful life, although they are well maintained by the City's stormwater team.
- Stormwater Operations Assessment Report. Completed in 2018. Undertaken to review staffing levels and maintenance practices to provide the City's desired level of service.

Utility Detail

Stormwater Regulations: Stormwater is regulated under the Federal Clean Water Act and under multiple state regulations. The State Water Resources Control Board (SWRCB) is charged with enforcement of stormwater quality requirements in California. The City is required by the Phase II Small MS4 General Permit to monitor all activities that discharge to the stormdrain system and to report annually on permit compliance. The permit also requires the city to monitor construction activities by conducting plan reviews and inspecting all construction activities, ensuring that the activities are complying with best management practices (BMPs) to keep material out of the stormdrains.

Stormwater Infrastructure: Stormwater infrastructure is designed to convey stormwater away from populated places and prevent flooding in the community. The system works through gravity and pumps, moving water from streets and sidewalks to the detention ponds and basins. The City's current system is aging and largely inadequate, as the City needs for stormwater infrastructure have changed – but the limited funding with the utility has restricted the ability of staff to conduct needs assessments for each of the City's pump stations.

Stormwater Quality: Education and outreach on practices to maintain stormwater quality is a major focus of the stormwater quality program, which includes guidance for pollution prevention at home and at work. Tasks include reviewing development plans to ensure that developments are meeting state criteria for low stormwater impacts, annual training for City staff in preventing pollution, conducting inspections on pollutant spills and overseeing cleanup, as well as developing materials for public outreach. The program staff also undertake

stormwater testing, develop program monitoring and response plans, and complete yearly reports.



Outreach for the program has been developed for all ages, but litter around school sites is a significant issue for the City. Working with students from Sacramento State University, the City developed computer games aimed at kids called **Find It & Fix It** and **Protect Or Pollute** to educate the community about the impacts of our everyday choices and how they can contribute to polluting or protecting our local waterways.

Stormwater Current Events

SB 231 and the Definition of “Sewer”: Standard utility rate Proposition 218 processes involve public noticing, a protest hearing, and majority protest tabulations of property owners. But Stormwater is different. Historically, the definition of the Stormwater system as a utility has not been clearly defined, so rates associated with stormwater enterprise funds are subject to voter approval, like any other fee levied by a municipality not directly defined in Proposition 218 as an exception to the voter approval process. Each step of the majority protest process (used for the Water, Wastewater and Solid Waste utilities) must be followed, and if a majority protest does not occur, the approval of the rate increase is submitted to property owners in a vote. Ballots are mailed out to property owners by the city (not the County) of commercial, residential and multi-family properties. Tenants are not eligible to vote. One vote per parcel is counted, and a simple majority is required for the rates to pass.

Why is this? When Proposition 218 was established, the exemptions for voter approval of new taxes and fees were listed as water, trash and sewer services. In the beginning, it was interpreted that “sewer” included wastewater and stormwater sewer systems. However, in 2002, a court case determined that the term “sewer” did not include stormwater systems. This decision has resulted in few rate approvals for stormwater systems in the State, and a heavier reliance on general funds for stormwater operations (or stormwater operations being supported entirely by general funds.) In 2017, the California Senate approved Senate Bill 231, which changes the definition of “sewer” to include stormwater systems. Jurisdictions are watching as SB 231 is tested through the State’s court system.

COMMISSIONER ORIENTATION PACKET

WEBSITE LOCATIONS AND NAVIGATION

City Commission Webpage:

<https://www.cityofdavis.org/city-hall/commissions-and-committees/utilities-commission>

The screenshot shows the official website of the City of Davis, California. The header includes the city logo, navigation links (Contact Us, City Council, Agendas, Jobs, Staff Directory, Calendar, Social Media), a search bar, and a language selector. The main navigation bar is green with white text for various city services. The page is titled 'UTILITIES COMMISSION' and notes it was formerly the Utility Rate Advisory Commission. It provides a detailed 'Function' section with three paragraphs describing the commission's role in recommending utility rates, considering city goals, and evaluating service options. It also lists the 'City Council Liaison' (Lucas Frerichs and Dan Carson), 'Staff Liaison' (Stan Gryczko), and the 'Number of Members' (7 Regular and 1 Alternate). The 'Regular Meeting Time & Place' is specified as the third Wednesday of the month at 5:30 p.m. in the City Hall Conference Room. 'Additional Information' includes links to resolutions establishing and revising the commission. A sidebar on the right lists 'Commission Members' with their names, positions, and term end dates. At the bottom, it provides contact information for the Utilities Commission and a link to subscribe to email notifications.

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UTILITIES COMMISSION

Font Size: [A] [A] [A] Share & Bookmark Feedback Print

Formerly the Utility Rate Advisory Commission

Function

To recommend rate setting principles and reserve policies for Davis utilities; annual or multi-year adjustments to the City's utility rates; and technologies, pilot programs and initiatives for City Council consideration and potential staff evaluation.

To consider applicable City goals and policies and incorporate them into utility policies; costs associated with providing utility services; utility customer needs and satisfaction with utility services; short and long term factors and consequences identified in rate studies; information provided by city utility managers, the City Council, and City advisory commissions, especially the Natural Resource Commission (NRC) and Finance and Budget Commission (FBC); current and potential future state regulations and policies, industry experience and best practices.

To evaluate and compare options to improve utility service and/or change the scope and methods of service delivery; social and economic equity effects of utility service and rate options on different segments of the Davis community; utility rates and rate structures of other communities to assist with informing policies for Davis; and long-term strategies to achieve service value and efficiency, resiliency, environmental sustainability, and other City objectives.

City Council Liaison

Lucas Frerichs (Regular), Dan Carson (Alternate)

Staff Liaison

[Stan Gryczko](#), Public Works Utilities and Operations Director, 530-757-5686

Number of Members

7 Regular and 1 Alternate

Regular Meeting Time & Place

Third Wednesday of the month at 5:30 p.m. in the City Hall Conference Room, located at 23 Russell Boulevard.

Additional Information

[Resolution Establishing the Utility Rate Advisory Commission \(PDF\)](#)

[Resolution Revising the Purpose and Changing the Name to the Utilities Commission \(PDF\)](#)

To receive meeting agendas by email [Subscribe to eNotifications](#)

Utilities Commission

- Agendas
- Minutes
- Meeting Videos

Commission Members

Name:	Braun, Gerald
Position:	Regular
Term End:	12/31/2020
Name:	Bystrom, Olof
Position:	Vice Chair
Term End:	12/31/2022
Name:	Deos, Linda
Position:	Regular
Term End:	12/31/2022
Name:	Franco, Jacques
Position:	Regular
Term End:	12/31/2020
Name:	Kristov, Lorenzo
Position:	Regular
Term End:	12/31/2022
Name:	Roberts-Musser, Elaine
Position:	Regular
Term End:	12/31/2020
Name:	Troost, Johannes
Position:	Chair
Term End:	12/31/2022
Name:	Williams, Matt
Position:	Alternate
Term End:	12/31/2020

Contact/Send Comments to the Utilities Commission (Formerly the Utility Rate Advisory Commission):
UC@cityofdavis.org

COMMISSIONER ORIENTATION PACKET

CITY OF DAVIS COMMISSION HANDBOOK AND BROWN ACT GUIDE



CITY OF DAVIS COMMISSION HANDBOOK



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INTRODUCTION

Over 150 citizens participate on boards, commissions and committees to assist and advise the City Council on various issues facing the Davis community. Boards, commissions, task forces and committees (referred to collectively as “city commissions”) have a critical role in the city of Davis. As a commissioner, you serve as a conduit for citizen input – a way of gathering, analyzing and recommending options to the City Council, which has the final responsibility for making policy decisions. You will find your role requires time, effort, and sometimes lengthy meetings. However, it also provides an opportunity for you to participate in the decision-making process and help shape the future of Davis. The individuals who serve on the city’s commissions are among the most respected and appreciated volunteers in the community.

The purpose of this handbook is to introduce you to your role as a commissioner by outlining accepted practices. While attempting not to be overly restrictive, procedures are established so that expectations and practices can be clearly articulated to guide commissioners in their actions. This handbook will:

- Outline the role and function of the City’s boards/commissions/committees;
- Review important guidelines and expectations of appointed members;
- Provide information about the history and composition of the City organization; and
- Provide members with information necessary to understand areas of responsibility for their respective board, commission, or committee, and their role in serving the City.

This handbook provides a summary of important aspects of City government and commission activities. However, it cannot incorporate all material and information necessary for undertaking the business of commissions. Many other laws, plans and documents exist which bind the commissioners to certain courses of action and practices.

It is important that new members of commissions gain an understanding of the full range of services and programs provided by the city. For new members joining a commission, staff liaisons may provide an orientation and opportunities to tour facilities and provide background information on current issues facing the commission.

Here is a quick summary of how city commissions serve the democratic process in Davis:

- Hold public meetings and use other means to gauge the community’s attitude about certain issues;
- Recommend policies and procedures related to their respective fields to the City Council;
- Serve as intermediary between the public, city staff and the City Council by providing information, explanation, and support for different points of view; and
- Make, in certain cases, decisions for the City. Some commissions have quasi-judicial powers, such as the Planning, Tree and Historical Resources Management Commissions, and can make decisions for the city. All such decisions are subject to appeal to the City Council.

CHAPTER 1

CITY OF DAVIS

BRIEF HISTORY

Though Davis dates its founding from the arrival of the railroad in 1868, the city was officially incorporated on March 28, 1917. Initially, the commission-form of government served the local population. The 1920s saw the installation of paved and lighted streets, sewage and water systems, and the development of local governance structures such as the establishment of the Mayor-Council form of government. In 1950, the first city administrator was appointed, and in 1965, the position of City Manager was instituted.

The University became a general campus of the University of California system in 1962. The following decades witnessed a large population and construction boom, reflective of trends observable in many other parts of California. Ultimately however, a more growth-conscious attitude took hold, contributing to the Davis' reputation as a community highly concerned with finding a balance between environmental considerations and growth.

The Planning Commission was established in 1925, and the city's first General Plan was adopted in March 1927. The current General Plan was adopted in 2001 and has been amended through 2016. The City Council has directed staff to begin another General Plan Update to begin in earnest in 2019/2020, once a Core Area Specific Plan (Downtown Plan) is underway to create a 2040 Vision for Downtown Davis.

Today the City of Davis is a university-oriented city of over 67,000 residents. Specific planning decisions made in years past have led to the development of a city widely considered to be one of the most bike-friendly in the country. As the City moves forward, the close relationships between students and city residents will surely continue to strengthen the close college-town community that has arisen over the past 150 years.

CITY GOVERNMENT

Davis uses a Council-Manager form of government. The City Council serves as the legislative body, sets policies and procedures, and represents the citizens of Davis. The City Council appoints the City Manager to carry out the Council's direction and act as the chief administrative officer for the city.

City Council

The Davis City Council, the governing body of the city, is made up of five council members who are elected in a non-partisan election and serve "at large" representing the whole city. The City

Council is accountable to the citizens it serves. Council elections occur with the state primary election in March of even calendar years. Council members serve four-year terms. Three council members are elected in one election and two council members in the next election. The selection of mayor is the candidate receiving the highest number of votes in the previous election. That person serves as mayor pro tem the first two years of his/her term and mayor the second two years of his/her term.

The City Council formulates policy, approves programs, appropriates funds and establishes local taxes and assessments, as well as enacts local laws (ordinances) and regulations for governing the City. The City Council reaches decisions by a majority vote. The local ordinances adopted by the City Council are compiled in the municipal code. Other City Council directives and policies are recorded in resolutions or council minutes.

The Davis City Council usually meets on Tuesday evenings at 6:30 p.m. in the Community Chambers at City Hall. Copies of the agenda are available 72 hours before the meetings at the City Clerk's office, posted at City Hall and online. City Council agendas may be emailed to individuals by subscription. City Council and commission agendas with staff reports attached can be viewed on the city web page (<http://cityofdavis.org>).

The City Council also serves as the Successor Agency to the former Redevelopment Agency and as the City's Public Facilities Financing Authority.

City Manager

The City Manager is the chief executive officer and the head of the administrative branch of the city government. The City Manager implements policies and procedures initiated by the City Council, prepares and administers the municipal budget, advises the Council of future financial needs of the city, initiates and supervises business relationships, and directs the daily operations of city government. The City Manager is responsible for all city personnel, except the City Attorney. The City Manager's Office (Department) is primary staff for the Human Relations Commission, Civic Arts Commission, Police Accountability Commission, and Social Services Commission.

City Clerk

The City Clerk is a position hired by the City Manager and responsible for the recording, writing and maintaining the records of City Council proceedings. The City Clerk conducts municipal elections through coordination with County of Yolo Elections Office. The Clerk stores and indexes official documents and city records for retrieval, administers Statements of Economic Interest disclosures and Campaign Statements filed under the Political Reform Act, and is the custodian of the seal of the city.

City Attorney

The City Attorney is appointed by the City Council. The City Attorney advises the City Council and city officers (in their official capacity) in legal matters, attends all Council meetings and represents the city in legal actions and proceedings. The City Attorney and members of the City Attorney's office maintain an attorney-client relationship with the city, its officers, agents and

employees, so their official communications are protected as confidential attorney-client privilege. The City Attorney rarely attends commission meetings but may provide counsel to staff when legal issues arise on commission matters.

Community Development and Sustainability Department

The Community Development and Sustainability Department is responsible for (1) researching, analyzing and recommending proposed general and specific plans, ordinances, codes and guidelines; (2) reviewing and making recommendations on proposed development projects; (3) ensuring that approved project plans are consistent with city policies; (4) inspecting all residential, commercial and industrial building construction to ensure compliance with applicable codes; and (5) reviewing historical resource designations and design review. The Community Development and Sustainability Department serves as primary staff to the Historical Resources Management Commission, Natural Resources Commission, Open Space and Habitat Commission, and Planning Commission.

Administrative Services Department

The Administrative Services Department has three divisions:

Human Resources Division: The Human Resources Division is responsible for the direction and coordination of filling vacant positions, administering employee benefits, facilitating all labor negotiations, citywide training programs and risk management. The Human Resources Division staffs the Personnel Board.

Information Services Division: The Information Services Division maintains the city's network, is responsible for the city's hardware and software, provides internal computing resources, and maintains the city's web site and GIS systems.

Finance Division: The Finance Division houses the Finance Administrator as the City's controller, auditor and treasurer. Finance is responsible for developing and maintaining the annual city budget and for providing all business services related to the city organization. The Finance Division staffs the Finance and Budget Commission.

Fire Department

The Fire Department is responsible to ensure that the community's emergency resources and prevention services are effectively and efficiently delivered and managed. The Fire Department provides emergency services, which include pre-hospital emergency services at the EMT-1D level (defibrillation); response to structural, vehicular and vegetation fires, hazardous materials response, water rescue, public assistance and other emergencies. The prevention services provided include fire and life safety inspections, plan review services; public education on fire safety and fire prevention; fire investigations and a youth fire diversion program. The training division trains and prepares the firefighters to respond to a wide diversity of emergency incidents.

The department has shared services agreements for a boundary drop with UC Davis and a training services and program management agreement with the West Valley Regional Fire Training Consortium. The Fire Department has three contracts to provide emergency services: East Davis County Fire Protection District, Springlake Fire Protection District and No Mans Land Fire

Protection District. Each of these districts has a board of commissioners who report to the Yolo County Board of Supervisors.

Parks and Community Services Department

This department is responsible for operating and maintaining a variety of services and facilities related to recreation including design and maintenance of various parks, greenbelts and street trees; staffing and operation of community buildings and swim complexes; administering programs for senior citizens and individuals with disabilities; and providing a variety of general services to other departments. The Parks and Community Services Department provides primary staff for the Recreation and Park Commission, Senior Citizens Commission, and Tree Commission.

Police Department

This department is responsible for carrying out law enforcement and the protection of life and property. The Police Department also acts as a public safety dispatch center for all emergency calls for police, fire and ambulance services in Davis. In addition, the Police Department issues dog licenses, dance permits, noise permits, parade permits, parking permits and security clearances.

Public Works Department

The Public Works Department is responsible for four areas; 1) operation and maintenance of the street and utility systems; 2) implementation of the capital improvement program; 3) processing and inspection of public infrastructure improvements in subdivisions; and 4) administration of the solid waste collection service agreement. Public Works Department staffs the Bicycling, Transportation, and Street Safety Commission; Utility Rate Advisory Commission; and Unitrans Advisory Committee.

City Documents Relevant to Commissions

Commission Enabling Resolutions

The City Council has adopted a resolution of formation and operation for each commission, outlining the commission's purpose, scope of responsibility, membership structure, and terms of office. Staff liaisons and commissions should periodically review their enabling resolutions to ensure that matters on their agendas are within their assigned subject matter jurisdiction.

Commission Work Plan

The Commission shall maintain a work plan of clearly defined long- and short-term objectives. These objectives should be reflective of current City Council Goals relating to the commission's subject matter jurisdiction. The City Council may review commission work plans during its Council Goal setting sessions. Commission work plans and long range calendars are intended to provide City Council with an overview of commission activities and focus areas in order to consider their alignment with Council Goals. A sample commission work plan can be found as [Appendix A](#).

City Council Goals

Each Council sets goals and objectives for a two-year period, usually following Council elections. From these goals and objectives come specific tasks, which are then included as part of staff and commission work plans for those two years. Tasks listed in the Council Goals do not cover every activity of city programs or staff but rather just those actions that are new, strategic in nature, ongoing, or in some cases higher in priority. Most tasks have a point or points of contact; and some have a timeline in which they expect to be completed. Commissions are expected to frame their work plans around the goals and objectives as adopted by each Council, while continuing routine duties that may not be included in the goal document.

Davis Municipal Code

The Davis Municipal Code ("DMC") constitutes a codification of the administrative, criminal and regulatory ordinances of the City of Davis, as adopted by the City Council. Each section of the code contains substantive ordinance language. The code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Provisions in the DMC are enforced by the Code Enforcement division of the Police Department and, in some cases, may be further enforced by staff in other departments. An online version of the DMC is available on the city's website, and a hard copy is available to view in the City Clerk's Office.

Davis General Plan

The City of Davis' General Plan is the primary guide to policies and actions regarding the City's growth. The general plan articulates a community's vision of its long-term physical form and development. General plans are prepared under a mandate from the State of California, which requires that each city and county prepare and adopt a comprehensive, long-term general plan for its jurisdiction and any adjacent related lands. The general plan serves as a basis for decision-making. The plan directs decision-makers, who must balance competing community objectives, which at times may present trade-offs that the commission, and ultimately City Council, must thoroughly consider.

City Budget

The Budget is the primary policy document adopted by the City Council that establishes the service levels and capital projects to be provided to the community by its city government. It establishes the financial and human resources devoted to accomplishing community goals and objectives as reflected by the City Council. It provides a logical structure to organize its various programs, projects and other expenses. It provides a system for control of its revenues and expenses. Some, though not all, commissions may need to refer to the Budget documents when making decisions and recommendations to Council which may have fiscal impact on the City. Staff liaisons should be proactive in assisting commissions on matters of this nature.

Other Adopted Policies/Guidelines

Staff Liaisons may ask that commissioners be familiar with and from time to time make recommendations on adjustments to city policies and procedures and other City documents which fall under the commission's scope. Documents include, but may not be limited to:

- Annual City Financial Statements (FBC)
- Aquatics Assessment Report (RPC)
- Beyond Platinum: Bicycle Action Plan (BTSSC)
- Building and Park Facilities Assessment (FBC/RPC)
- Climate Action and Adaptation Plan (NRC)
- Consolidated Action Plan Submitted to the U.S. Department of Housing and Urban Development (SSC)
- Davis Downtown Traditional Residential Neighborhood Guidelines (HRMC/PC)
- Davis Register of Historical Resources (HRMC)
- Financial Forecasting Model (FBC)
- Guidelines for Housing that Serves Seniors and Persons with Disabilities (SCC)
- Manual on Uniform Traffic Control Devices (BTSSC)
- Open Space Acquisition and Management Plan (OSHC)
- Parks and Recreation Facilities Master Plan (RPC)
- Police Department Strategic Plan (PAC)
- Street Pavement Needs Report (BTSSC/FBC)
- Transportation Implementation Plan (BTSSC)
- Transportation Systems Design Standards (BTSSC)
- Walk / Bike Audit Report (BTSSC)
- Zero Waste Plan (NRC)

City Commissions

The City of Davis currently has seventeen advisory groups categorized as boards, committees, and commissions. The City Council may also appoint task forces for specific issues and determined lengths of time. Each advisory body has a specific focus and serves to make recommendations to the City Council on issues related to that specific field. City Council may also decide to appoint ex-officio members without voting privileges as they deem necessary. The following is a list of all City commissions, a full description of each can be found in the pages toward the end of this chapter:

- Bicycling, Transportation, and Street Safety Commission
- Civic Arts Commission
- Finance and Budget Commission
- Historical Resources Management Commission
- Human Relations Commission
- Natural Resources Commission
- Open Space and Habitat Commission
- Planning Commission
- Police Accountability Commission
- Recreation and Park Commission
- Senior Citizen Commission
- Social Services Commission
- Tree Commission
- Utility Rate Advisory Commission

Boards / Committees / Task Forces

From time to time, the City Council creates city committees and task forces to look at specific issues. These committees and task forces are governed by the same rules and regulations as commission; however, their membership structure will vary and their scope and duration are limited. In addition, the city participates on boards, commissions and committees that have been established by regional agencies or organizations to discuss issues involving the county, schools, local businesses, etc. The following describes a few of the City's on-going committees/boards; for a complete list of the City of Davis' committee/agency memberships, contact the City Clerk's Office:

Personnel Board

The function of the Personnel Board is to provide advice to the City Council and the City Manager through objective decisions concerning personnel issues to help ensure fair and equitable conditions of employment. The board hears appeals submitted by city employees involving disciplinary action, dismissal, and/or demotion, and certifies its findings and recommendations as provided in the personnel system rules. The board, when requested by the City Council or City Manager, shall investigate and make recommendations on any matter of personnel policy. The board also reviews the city's workforce statistics.

Downtown Plan Advisory Committee

The Downtown Plan Advisory Committee reviews existing plans and other documents and serves as a mechanism for public input on the development of the Downtown Plan – a 2040 Vision for Downtown Davis. The committee provides comments and feedback on drafts to city staff and project consultants with the goal of creating documents responsive to community goals and aspirations, and makes recommendations to the Planning Commission and City Council at key project milestones.

Unitrans Advisory Committee

The Unitrans Advisory Committee holds public meetings review any proposed Unitrans route, schedule, and fare changes, and addresses Unitrans issues brought forward by residents. Members are on-call to convene if a special issue arises.

Broadband Advisory Task Force

The Broadband Advisory Task Force advises the City Council on goals for broadband access to residences and businesses, examines various models of broadband delivery, explores funding options/mechanisms for capital and maintenance, and next steps for implementation.

Bicycling, Transportation, and Street Safety Commission (BTSSC)

Purpose

The Bicycling, Transportation, and Street Safety Commission is appointed by and acts as an advisory body to the City Council and staff on matters relating to transportation.

Roles and Responsibilities

- Advise the City Council and staff on matters relating to transportation programs, capital projects, and planning efforts, including: transportation policy; transit, bicycle, pedestrian, and vehicular planning; street design; traffic operations and enforcement; traffic safety; parking; and transportation infrastructure maintenance.
- Consider all transportation modes in its recommendations, with an orientation toward active transportation modes and overall traffic safety and circulation.
- Monitor and facilitate implementation of the General Plan Transportation Element, Transportation Plan, Beyond Platinum - Bicycle Action Plan, and Downtown Parking Management Plan amongst others.
- Serve as a focal point for the community and City government on transportation matters, projects, and issues.
- The Commission shall report annually to the City Council its findings, recommendations and activities, or with greater frequency where the Council, Commission, or City staff deems necessary.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Second Thursdays (monthly) at 5:30 p.m

Davis Senior Center Valente Room (646 A Street)

Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning/termination of membership).

References

Resolution No. 14-033 (2014)



Civic Arts Commission (CAC)

Purpose

The Civic Arts Commission is appointed by and acts as an advisory body to the City Council and staff on matters relating to City arts programs and facilities.

Roles and Responsibilities

- Develop and encourage programs for the cultural enrichment of the city.
- Coordinate and strengthen existing organizations in the cultural arts field.
- Propose methods to encourage private initiative in the arts and culture.
- Advise and consult with local, state and federal individuals/organizations in obtaining experience in and/or knowledge of resources available in the fields of culture and the arts.
- Formulate review and recommend:
 - Guidelines for the acquisition of all works of art by the city (purchased, gifted or otherwise). Review and make recommendations as needed for pieces to be acquired and their proposed locations.
 - Guidelines for arts contract programs that support community art programming projects and make annual funding recommendations to the City Council.
 - Programs and methods to encourage creative activities to the highest standards, and increase public understanding, appreciation and enjoyment of cultural activities and all forms of art
 - Policies to guide the review and recommendations related to the removal, relocation or alteration to any existing works of art in the possession of the city.
- Work with UC Davis in: (1) developing and carrying out joint projects; (2) collaborate with UC Davis arts professionals in other areas of mutual interest; and (3) maintain ongoing dialogue to promote substantive communication and cooperation in visual and performing arts.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Second Mondays (monthly) at 7:15 p.m. Does not normally meet in August.
Community Chambers Conference Room at City Hall (23 Russell Boulevard)



Term

Regular member: 4-year term
Alternate member: 2-year term
Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning/termination of membership).

References

Resolution No. 06-177 (2006)

Finance and Budget Commission (FBC)

Purpose

The Finance and Budget Commission is appointed by and acts as an advisory body to the City Council and staff on matters relating to city finances and focuses on an independent analysis of technical, financial and budgeting issues.

Roles and Responsibilities

- Providing transparency of City Finances to the citizens of Davis.
- Reviewing the spending outlined in the city budget in order to advise the Public that City Council/City Management is accountable for spending taxpayer dollars effectively and in keeping with important city priorities.
- Searching for and advising actions that could maximize city revenues and reduce governmental costs and help ensure municipal fiscal stability.
- Providing recommendations/special studies on financial and economic issues to the City Council.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Second Mondays (monthly) at 7:00 p.m.
Community Chambers at City Hall (23 Russell Boulevard)



Term

Regular member: 4-year term
Alternate member: 2-year term
Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 14-175 (2014)

Historical Resources Management Commission (HRMC)

Purpose

The Historical Resources Management Commission is appointed by and acts as an advisory body to the City Council on all matters pertaining to historical resources.

Roles and Responsibilities

- Act in an advisory capacity to the city council in all matters pertaining to all types of designated historical resources;
- Maintain a local cultural resources inventory of all types of historical resources within the city; publicize and periodically update the inventory;
- Work with city staff and the State Historic Preservation Office to administer the Certified Local Government program;
- Recommend standards to be adopted by the city council, to be used by the commission in the review of applications for certificate of appropriateness;
- Hear and render judgment and approve/deny applications for certificates of appropriateness and demolition certificates.
- Review new construction, significant exterior renovations, and demolitions within the boundaries of designated historic districts;
- Perform advisory review of new construction, significant renovation projects, and demolitions within three hundred feet of designated individual landmarks and merit resources and within adopted conservation overlay districts;
- Work with city staff and outside consultants as needed to develop policy documents for historic and conservation districts;
- Investigate and report to the city council on the use of various federal, state, local, or private funding sources, incentives and other mechanisms available to promote historical preservation in the city;
- Review and comment on the decisions and documents including environmental assessments under the California Environmental Quality Act, the National Environmental Policy Act, Section 106 of the National Historic Preservation Act, environmental impact reports, and environmental impact statements of other public agencies and private projects when such decisions or documents may affect any type of designated historical resources or potential historical resources in the city;
- Cooperate with local, county, state, and federal governments in the pursuit of the objectives of historic preservation
- Participate in, promote, and conduct public information, educational, and interpretive programs pertaining to all types of historical resources;
- Render advice and guidance upon the request of the property owner or occupant, on the restoration, alteration, decoration, landscaping, or maintenance of any designated historical resource;

- Provide for adequate public participation in local historic preservation programs, including the process of recommending properties for nomination to the National Register of Historic Places and the California Register of Historical Resources;
- Has authority to delegate certain minor projects to commission staff for any advisory review and for certificate of appropriateness review, approval or denial. The historical resources management commission shall establish guidelines for such projects to be reviewed by commission staff.
- Has quasi-judicial authority to make certain binding decisions under its subject matter jurisdiction. Aggrieved parties have the right to appeal decisions of the commission to the City Council.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Third Mondays (monthly) at 7:00 p.m. Meetings in January and February are held on the fourth Monday.

Davis Senior Center Activity Room (646 A Street)

Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Davis Municipal Code Article 40.23



Human Relations Commission (HRC)

Purpose

The Human Relations Commission is appointed by and acts as an advisory body to the City Council on matters regarding the development and promotion of positive human relations, mutual respect, understanding and tolerance among all persons throughout the community.

Roles and Responsibilities

- Advocate and encourage educational and other appropriate activities to seek to discourage or prevent discrimination and prejudice and/or to promote diversity, equality and justice. This function can be addressed by holding conferences and other public meetings, engaging in educational campaigns, partnering with other organizations to develop outreach information and programs, and other methods determined to be appropriate. Specific activities for which the Commission is responsible include the city of Davis Martin Luther King Jr. Day event, the city of Davis Cesar Chavez event and the city of Davis Thong Hy Huynh Awards.
- Recommend publications and reports as may address issues of discrimination, diversity, prejudice or other matters related to community principles or anti-discrimination.
- Recommend programs and activities to:
 - Encourage minority- and woman-owned businesses in Davis;
 - Prevent discrimination against groups and individuals to ensure public peace, health, safety and general welfare for all residents of Davis; as well as take other necessary actions, as directed by Council, to prevent discrimination against groups and individuals to ensure that all members of the Davis community will be treated equally and fairly.
- Study and make recommendations regarding problems in the city which arise from alleged discrimination prohibited by state and federal law or local statutes and report such information to the City Council.
- Refer individuals presenting specific grievances or complaints to the appropriate agency, official or process where such concerns are most appropriately addressed. It is not the intent for the Commission to attempt to adjudicate individual grievances.
- Listen to and gather information from individuals who feel they have been discriminated against so that information may be used to address broader community needs.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

6 ex-officio members representing the following: faith-based organization, high school student, ASUCD, Police Department, UC Davis, DJUSD

Meetings

Fourth Thursdays (monthly) at 6:30 p.m. November and December meets are held on alternate dates due to observed holidays.

Davis Senior Center Valente Room (646 A Street)

Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

None required.

References

Resolution No. 07-125 (2007)



Natural Resources Commission (NRC)

Purpose

The Natural Resources Commission is appointed by and acts as an advisory body to the City Council to provide recommendations on natural resource issues facing the City– including water conservation, air pollution, waste management, recycling and hazardous waste.

Roles and Responsibilities

- Advise the City Council on the preservation, management and enhancement of the city's natural resources.
- Review and make recommendations to the City Council relating to maintaining the quality and quantity of the city's water supply and wastewater treatment processes, and promoting water conservation.
- Review and make recommendations to the City Council pertaining to the degradation of air quality in the Yolo-Solano-Sacramento region.
- Review and recommend to the City Council ways to implement the Yolo County Solid Waste Plan and improve city-wide recycling efforts.
- Advise the City Council on ways to promote the use of renewable sources of energy.
- Advise the City Council on environmental matters relating to global warming, and toxic and hazardous substances.
- Report to the City Council recommendations for legislation and other actions that would limit actual or potential threats to the natural resources of the city.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Fourth Mondays (monthly) at 6:30 p.m. Does not normally meet in August or December.
Community Chambers Conference Room at City Hall (23 Russell Boulevard)

Term

Regular member: 4-year term
Alternate member: 2-year term
Term Limits: 8 successive years (exceptional circumstances may apply)



Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 07-041 (2007)

Open Space and Habitat Commission (OSHC)

Purpose

The Open Space and Habitat Commission is appointed by and acts as an advisory body to the City Council on all open space issues, programs and projects including those dealing with the habitat.

Roles and Responsibilities

- Areas that can be included are issues related to natural areas, wildlife and wildlife habitat, agricultural land conservation, land acquisition, regional parks, trail systems, environmental education and interpretation, project site design and project operations and maintenance.
- Monitoring the implementation of the city's open space objectives and identifying solutions to implementation problems.
- Serve as the focal point for the community and city government for open space projects and issues. Work cooperatively with the Recreation and Parks Commission, Planning Commission, and other city and community groups on issues of mutual interest.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

First Mondays (monthly) at 6:30 p.m.

Community Chambers Conference Room at City Hall (23 Russell Boulevard)

Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 06-182 (2006)

Planning Commission (PC)

Purpose

Pursuant to Government Code 65100 et seq., the Planning Commission is appointed by and acts as an advisory body to the City Council on matters relating to zoning regulations such as final planned developments, use permits, variances, zoning interpretations and ordinance amendments, and also serves as the advisory agency to hear subdivision matters.

Roles and Responsibilities

- Serve as the agency to hear matters relating to zoning regulations arising from either chapter 4 of title 7 of the Government Code, or the zoning code of the city, or both (i.e., annexations, rezonings, development agreements, final planned developments, use permits, variances, zoning interpretations and ordinance amendments).
- Serve as the agency to hear subdivision matters.
- Serve as the agency to hear general plan amendment applications that also request zoning or subdivision approvals.
- Develop and maintain a general plan and such specific plans as may be necessary or desirable. Review and make recommendations to the City Council on amendments to the general and specific plans.
- Determine the consistency of any project with the general plan using the criteria approved by the City Council.
- Make general plan findings on development applications.
- Investigate and report to the City Council regarding means of implementing the general plan.
- Consult with and advise public officials and agencies, public utility companies, civic, educational and other professional organizations and citizens, generally, regarding implementation of the general plan and specific plans.
- Has quasi-judicial authority to make certain binding decisions under its subject matter jurisdiction. Aggrieved parties have the right to appeal decisions of the commission to the City Council.
- Other duties as the Council may, from time to time, decide, in addition to any Council goals related to, among other things, the review, revision and implementation of the general plan, preparation and completion of studies, or coordination with other public agencies.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Second and Fourth Wednesdays (monthly) at 7:00 p.m.
Community Chambers at City Hall (23 Russell Boulevard)



Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office and the California Fair Political Practices Commission (annually and upon beginning and termination of membership).

References

Resolution No. 07-043 (2007)

Police Accountability Commission (PAC)

Purpose

The Police Accountability Commission provides community-based accountability via interactions with members of the public, the Independent Police Auditor, the Davis Police Department, and others.

Roles and Responsibilities

1. Develop Community Outreach Plan
 - Develop and execute a community outreach plan with input from the Independent Police Auditor.
 - Hold regularly-scheduled meetings and provide notice and an opportunity for community input. These meetings should be coordinated with various non-profit and/or faith-based groups to assure under-represented or vulnerable groups have a safe space to fully participate. All meetings will be open to the public.
2. Provide Input to Audit Davis Police Department Policies, Procedures, and Training
 - Coordinate with the Independent Police Auditor to identify and prioritize topics for Independent Police Auditor auditing. The Independent Police Auditor will conduct the audits but the Davis Police Accountability Commission will provide input and recommendations on prioritization of audits.
3. Recommend Changes/Improvements to Policy, Procedure, or Training
 - With Independent Police Auditor input, systematically review Davis Police Department policies and procedures and analyze new or changed policies.
 - With Independent Police Auditor input, systematically review Davis Police Department training.
 - Provides input to the Independent Police Auditor on recommendations for improvements to Davis Police Department policy, procedure, and training.
4. Review Independent Police Auditor Reports on Misconduct Complaints
 - Receive Independent Police Auditor reports on misconduct complaints
 - Recommend, for the Independent Police Auditor's consideration, further analysis of complaints or the complaint process.
 - Work with the Independent Police Auditor and Davis Police Department to promote ACR/mediation as a complaint resolution option.
 - Request further investigation by the Independent Police Auditor.
5. Provide Input into Reports
 - Provide input to the Independent Police Auditor into reports, at least on an annual basis, to include information about: misconduct complaint investigations and trends; recommendations concerning improvements to Davis Police Department policy, procedures, or training; results of audits; and joint projects with the Independent Police Auditor, including community outreach.

6. Assess the work of the Independent Police Auditor
 - Provide annual written input to the City Manager and the City Council on the effectiveness of the Independent Police Auditor.
7. When time permits, respond to Davis Police Department requests for input on matters outside Independent Police Auditor/Commission priorities, such as commenting on new programs.

Membership

9 regular members and 1 alternate. A quorum shall consist of 5 voting members.

1 regular member shall be a UC Davis student appointed by ASUCD (term may vary)

Meetings

TBD

Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

None required.

References

Resolution No. 18-149 (2018)

Recreation and Park Commission (RPC)

Purpose

The Recreation and Park Commission is appointed by and acts as an advisory body to the City Council on matters pertaining to public recreation and parks.

Roles and Responsibilities

- Advise the City Council on matters pertaining to public recreation and park planning.
- Review the annual budgets for park and recreation programs.
- Provide recommendations on public art projects as it relates to the park design or theme of a park.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

2 student ex-officio members: 1 Davis High School student elected by the student body and 1 UC Davis student appointed by the ASUCD President

Meetings

Third Wednesdays (monthly) at 6:30 p.m.

Community Chambers at City Hall (23 Russell Boulevard)



Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

None required.

References

Resolution No. 07-039 (2007)

Senior Citizen Commission (SCC)

Purpose

The Senior Citizen Commission is appointed by and acts as an advisory body to the City Council on matters affecting the aging in the community.

Roles and Responsibilities

- Identify the needs of the aging of the community and create a citizen awareness program for these needs.
- Exploring improved standards of services to the aging and exploring new services for the aging both in private and public sectors.
- Advising the City Council on matters related to policy and regulations relevant to senior citizens.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

1 commission member shall be appointed to serve as a voting member on each of the following:

- City of Davis Unitrans Advisory Committee
- Yolo County Commission on Aging and Adult Services

Meetings

Second Thursdays (monthly) at 2:30 p.m.

Community Chambers at City Hall (23 Russell Boulevard)

Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

None required.

References

Resolution No. 17-062 (2017)

Social Services Commission (SSC)

Purpose

The Social Services Commission is appointed by and acts as an advisory body to the City Council on matters relating to the health, safety and general welfare of the citizens.

Roles and Responsibilities

- Advise the City Council on all matters relating to issues of social services which affect the citizens of Davis, including but not limited to the issues of social services in health, affordable housing, homelessness, hunger, transit, child care, elder adult services, accessibility and low income needs.
- Serve, at the request of the City Council, as a community forum for education, discussion and debate around the issues of social services.
- Hold public hearings and community forums on issues which fall within its charge, and call appropriate witnesses to provide pertinent information.
- Serve, at the request of the City Council, as a liaison between community groups organizing around issues of social services, and city government.
- Coordinate the efforts of the City of Davis in recognition of volunteers and document the value of volunteer contributions to the City.
- Advise the City Council on Community Development Block Grant, Home Investment Partnership Program and other social services-related Federal and State grant programs.
- Coordinate with other city commissions on matters of mutual interest.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Third Mondays (monthly) at 7:00 p.m.

Community Chambers at City Hall (23 Russell Boulevard)

Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 12-072 (2012)

Tree Commission (TC)

Purpose

The Tree Commission is appointed by and acts as an advisory body to the City Council on tree related matters, including review and approval of tree removal requests.

Roles and Responsibilities

- Review and approve or deny tree removal requests.
- Hear appeals from decisions of the park and ground superintendent regarding public nuisances.
- Hear appeals regarding denials of tree modification permit applications.
- Review and make recommendations to the City Council regarding declaring a tree as a Landmark Tree.
- Review and make recommendation regarding requests for the removal of a Landmark Tree designation.
- Has quasi-judicial authority to make certain binding decisions under its subject matter jurisdiction. Aggrieved parties have the right to appeal decisions of the commission to the City Council.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Third Thursdays (monthly) at 5:30 p.m.
1818 Administrative Building A (1818 Fifth Street)



Term

Regular member: 4-year term
Alternate member: 2-year term
Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 06-187 (2006)

Utility Rate Advisory Commission (URAC)

Purpose

The Utility Rate Advisory Commission is appointed by and acts as an advisory body to the City Council on the City's utility rates, assumptions and programs, and related utility matters as directed by the City Council.

Roles and Responsibilities

- Recommend adjustments to the City's utility rates after careful review of the facts and key information pertaining to the City's utility systems and infrastructure as required in the rate setting process.
- Consider costs associated with providing utility service(s) that include, but are not limited to: operations and maintenance, repair and replacement, large capital projects, debt service payments and reserve requirements, enterprise utility fund reserves, customer demand forecasts and assumptions, demand side management programs, financing options, utility billing issues, customer notification, and regulatory compliance.
- Consider both short and long term factors and consequences when recommending annual and/or multi-year adjustments to the City's utility rates.
- Advise Council concerning the positive and negative impacts of one year versus multi-year utility rates and to recommend rate policies to the Council.
- Consider the utility rates and rate structures of other communities as appropriate to provide sound recommendations to the Council.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate. A quorum shall consist of 4 voting members.

Meetings

Third Wednesdays (monthly) at 6:30 p.m.

Community Chambers Conference Room at City Hall (23 Russell Boulevard)

Term

Regular member: 4-year term

Alternate member: 2-year term

Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 16-173 (2016)

CHAPTER 2

SERVING ON A COMMISSION

MEMBERSHIP

Application/ Selection Process

Application

Anyone 18 years of age or older, who resides within the Davis Joint Unified School District area and/or owns a business in Davis, may apply to serve on a City commission. Individuals employed by the City of Davis may not serve on a City commission.

Applications are available at City Hall during normal business hours and available online. Applications are generally accepted on a rolling basis, with exceptions for scheduled recruitment periods during which an application deadline is established. Regular commission appointments occur on a biennial basis, with 2-month recruitment periods. The City of Davis will advertise all recruitments in the local newspaper, city website, and other media.

Applications are kept on file for a period of two years from the date submitted. On-file applicants will be contacted as vacancies occur to ensure their continued interest in serving on a commission.

Appointments

The City Council has appointed a Subcommittee on Commissions to help facilitate the applicant selection process. The Subcommittee will hold a brief 10-15 minute interview with each applicant. Individuals seeking appointment who have already participated in the interview process generally will not need to be re-interviewed, unless the Subcommittee requests otherwise.

After interviews are completed, the Subcommittee will forward their applicant recommendations, along with all applications and supporting materials, to the full City Council for appointment at a regularly noticed public meeting. Applicants will receive notice of the meeting date/time before appointments are made. Each Council member will vote to appoint applicants, and they may or may not vote in favor of the Subcommittee's recommendations. It requires a majority vote of the Council to appoint a commission member. Following Council appointment, applicants will be notified of Council action and if appointed, receive orientation materials.

Moving from one commission to another

Individuals may apply to be appointed to another commission vacancy while actively serving, but if appointed, would automatically relinquish the position on the first commission. There does not have to be a break in service to be eligible to move from one commission to another.

Volunteer Role

Compensation

Commission members are dedicated community members who freely volunteer their services and time to serve on a City of Davis advisory body. Members shall receive no compensation for the performance of their official duties unless compensation is expressly provided by the City Council.

Training/Conferences

City-sponsored training invitations may be offered to members of the commission. As training opportunities arise, commission members are encouraged, and in some cases expected, to participate whenever possible. Some trainings may be mandatory to maintain active status for certain advisory bodies. At times, non-City-sponsored trainings or conferences may be offered to members of certain advisory bodies.

Commission members may request to receive expert training workshops or hold community forums on specific topics pertaining to the commission's function/scope. Staff may determine whether resources are available for these events and the best course of action to fulfill them.

Oath of Office

The Oath of Office is the standard oath set out in the California State Constitution and is required for all elected and appointed officials in California, as well as all city employees. Oaths may be completed during a swearing in ceremony upon your first commission meeting, or the first meeting with your staff liaison, whichever is sooner. Failure to take the Oath of Office within 30 days of the start of your term shall be cause for termination of membership.

Terms of Office

Term of office on most commissions for regular members is four years, although all commissioners serve at the pleasure of the City Council. The term of office for alternate members is two years. There are exceptions such as the Personnel Board or other committees/task forces whose members are selected for their expertise or are representatives from other agencies. The terms of commissioners are staggered to provide continuity to the commissions. The term length for each seat is fixed; if a seat is vacated before the end of the term, the new member will serve the remainder of the current term.

Reappointment Policy

The City Council has adopted a general term limitation for members on any board or commission of eight successive years or two full terms. Any board or commission member having served eight successive years may be re-appointed based on exceptional circumstances. Exceptional circumstances may include, but not be limited to, the incumbent's special expertise, the need to preserve continuity on the board and commission, or a lack of other qualified applicants. It should be noted that the City Council will take attendance records and term limits into consideration when evaluating re-appointment of commission members. Members who have termed out for a commission must wait one year before re-applying for that same commission. However, individuals may be appointed to a different commission.

Attendance

Regular attendance at commission meetings is of utmost importance to your role as a commissioner. Failure to comply with the attendance rules and other requirements as outlined in this section can result in automatic termination of your membership. All commissions, regardless of the frequency of meetings, are subject to these attendance requirements. A member must be present for at least 50% of the entire meeting to be counted as present for purposes of attendance. The City does not allow teleconferencing at commission meetings in order to avoid an absence.

Absence from three consecutive meetings.

Absence from three consecutive regular meetings of the body will result in removal from the commission. If a member has been absent from two consecutive regular meetings, the staff liaison should advise the member that non-attendance at the next meeting will negatively impact their membership. Upon the third consecutive absence, the staff liaison shall report the absence to the City Clerk's Office for immediate action.

Reporting absences

The staff liaison to each commission shall report the full attendance record of each member to the City Clerk on an annual basis. Absence from 1/3 or more of all regular meetings held within the reporting period will result in termination of membership.

Excused Absences/Leaves of Absence

Absences may be excusable due to one of the following reasons:

- Conflict between a scheduled commission meeting and a religious or cultural holiday. Written notice of this conflict should be received at least 2 days in advance of the meeting.
- Business, family, or personal conflict. Written notice should be received at least 2 days in advance of the appointment/meeting.
- Illness. Written notice should be received at least 1-2 hours in advance of the meeting.
- Family illness/emergency. Notice may be received as soon as possible.
- Leave of absence. Notice of the leave of absence must be filed with the staff liaison as far in advance as possible prior to the actual absence.

If circumstances occur that result in a need for extended absences, this should be discussed with the staff liaison. Absences will be considered on a case-by-case basis, and does not guarantee that your status as a member will not be affected. An absence may be unexcused if: 1) this is the member's third consecutive absence; or 2) continuing subject matter requires that the commissioner be present to receive the necessary information to make decisions on an issue at a future meeting.

Termination of Appointment

Removal from Office

The importance of being able to fulfill the requirements of being a commissioner cannot be emphasized enough. Failure to recognize these requirements can result in termination of your appointment. The following are reasons why members may be removed from a commission:

- Absence from three consecutive meetings
- Absence from 1/3 or more of all regular meetings in a year
- Non-filing of required Conflict of Interest Disclosure Statements
- Non-attendance of required trainings
- Failure to take the Oath of Office
- Failure to meet eligibility requirements for membership

If a commissioner has outstanding Conflict of Interest statements or fines, they will not be re-appointed. Additionally, they will not be appointed to any commission for a period of one year if terminated more than once for failure to file such statements.

Resignation

A commission member wishing to resign, whether at the time of or prior to the expiration of their term, shall submit a letter of resignation to the City Clerk and/or to their respective staff liaison. This letter may be submitted via post or email. The effective date of the resignation is the date it is received by the Clerk unless a future date is indicated. A new appointment process to fill a vacancy will not begin until a written resignation is received by the Clerk.

COMMISSION ORGANIZATION

Chair/Vice Chair



Appointment (Annual)

The Chair and Vice Chair are selected by the majority of the commission for a one-year term, and shall hold this position until a successor is appointed or until their terms as members of the commission expire. No commission members should serve as chair for more than two consecutive years; there is no limit for vice chair.

Although it is suggested that appointments occur at the beginning of the calendar year, Commissions may determine when it is appropriate to schedule chair/vice chair selection. All chair and vice chair appointments shall take place at a regular commission meeting and be recorded in the minutes.

The willingness and ability of an individual to serve as the chair or vice chair should be taken into consideration. Commissions should try to give all commissioners an opportunity to serve as chair, however the responsibilities of service as chair and vice chair do take some extra time.

Nominating members for Chair/Vice Chair

Commissions may choose their chair/vice chair utilizing various methods. Please note: Action by “secret ballot” is prohibited under the Brown Act.

Options include:

- 1) Formal motions to appoint specific individuals. Move/Second/Vote. Action will require a majority vote.
- 2) Ask for a show of hands to express interest. Staff will prepare and distribute a vote chart for members to complete. Staff will compile and read off the votes, thereby appointing through a grid system. Appointments through this method also requires a majority vote.

Some commissions may prefer a different structure than Chair/Vice Chair. Some commissions elect Co-Chairs who preside on a rotating basis determined by the commission. This type of alternative structure and others may be appropriately determined by each commission and its members.

Duties/Responsibilities

- Preside at all official meetings of the board, commission or committee. The Chair must exercise sufficient control of the meeting to eliminate irrelevant, repetitious or otherwise unproductive discussion. It is important, both from a productive and legal stance, that the discussion on the floor stay focused on the agenda item.
- Work with the staff liaison to assist with preparing meeting agendas. The Chair may assist staff in determining the order of the agenda, timing of items, etc.
- The Chair should act as an impartial facilitator to help the group achieve consensus on an issue and derive a decision from the discussion. The chairperson must ensure that all commissioner viewpoints are heard, and protect new thoughts from being rejected without evaluation in a fair and unbiased manner. The Chair should discourage blame-orientated statements, and solicit comments from reticent commission members. To achieve both the perception and the reality of impartiality, it can be helpful for the chair to hold off expressing his or her views on a matter until after everyone has expressed their thoughts, and not engage in debate.
- Attend City Council meetings or other advisory meetings as needed to represent the commission or to testify to the position of the commission, with the approval and authorization of the full commission.
- Sign correspondence from the commission with the approval and authorization of the full commission and the City Council.
- The Chair must manage, to the extent possible, activities of members of the public in attendance at the commission meeting. Disruptive and/or inappropriate conduct should be addressed. The Chair, working with the rest of the commission, should impose appropriate time limits for public comment based on a verbal or non-verbal survey of attendees wishing

Information to Chairs on how to preside over a meeting is provided under the section, “Running a Meeting” (Chapter 4).

to speak on an item. The Chair cannot establish new rules related to decorum or meeting procedure without approval of the full commission.

Vice Chair

The Vice Chair must understand the roles of the Chair and must preside over meetings at which the Chair is absent (either due to actual absence or recusal from an item due to a conflict of interest).

Chair/Vice Chair Absence

In the event that both the Chair and Vice Chair are absent from a meeting, the commission may appoint an Acting Chair to preside over that particular meeting. This appointment shall only be in effect for that meeting.

Alternate Member

The Alternate member may participate in all discussions. However, they may not make a motion, second a motion, or vote on any agenda items except under the following circumstances:

- If one or more regular voting members is absent.
- If there is a vacant seat or a conflict of interest causing the number of regular voting members to be less than the full membership of the commission.
- If a voting member shows up late to a meeting, he or she cannot vote on the agenda item if the alternate has been designated at the start of that item.
- If only one of two alternate members may vote, the voting privilege is by seniority, or otherwise established by the commission.

If/when a regular member resigns prior to a designated term ending date, the Alternate will automatically assume the vacant regular position. The City will then recruit to fill the vacant Alternate position. The Alternate may also, upon the end of their term, request to be appointed to a regular position during regular biennial recruitments.

Individual Commissioners

Although members may be selected in part because they can represent the viewpoint of clearly defined groups, you should, upon appointment, pledge to represent the overall public good and not that of an exclusive group or interest. To be selected as a city of Davis commission member is an honor and provides an unusual opportunity for genuine public service. Although the specific duties of each commission vary widely with the purpose of which it was formed, there are certain responsibilities that are common to all commission members. The following is a summary of those responsibilities:

- Attend every meeting (contact staff liaison requesting an excused absence as soon as you know that you will miss a scheduled meeting).
- Abide by the Ralph M. Brown Act on open meetings. All members will receive the full text of the Brown Act. Once an individual is appointed to a commission, they must comply with the requirements of the Brown Act.

- Prepare in advance of meetings. Carefully review your commission meeting agenda and meeting materials prior to each meeting in order to be fully prepared to discuss, evaluate and act on all matters scheduled for consideration. Conclusions based on thorough investigation will strengthen the value of the commission's recommendation.
- Understand the role and scope of responsibility of the commission on which you serve.
- Serve as a model of leadership and inspire public confidence in Davis government.
- Represent fairly and fully the majority views of your individual commission. Do not speak for the commission unless authorized by action of the full commission. When appearing in a non-official, non-representative capacity before any public or private body, you should indicate that you are speaking only as an individual and expressing your personal views.
- Do not speak for the city unless authorized to do so by action of the City Council.
- Good communications – members are in a unique position of serving as a liaison between the city and its citizens and can help to reconcile contradictory viewpoints and in building a consensus around common goals and objectives.
- Supportive relationships with the City Council and city staff are basic for successful operation of any commission. In contacting city personnel on items of consideration, the proper channel is through the designated staff liaison providing support for your commission.
- Establish a good working relationship with fellow commission members – respect individual viewpoints, allow other members time to present their views fully before making comments, be open and honest, welcome new members, strive to minimize political action on issues.

All officials have an interest in supporting the chair's efforts to conduct meetings effectively and fairly. Commission members should all work towards achieving the following meeting goals:

- Receive and share information at meetings so everyone can make informed choices.
- Act and speak with honesty and integrity.
- Be respectful of other people's time. Stay focused and act efficiently during meetings.
- Be kind and respectful of your colleagues. All members of the commission bring different backgrounds and levels of experience to discussions.
- Share thoughts and perspectives, and reach a decision on what options best serve the public's interests and other community values.
- Reach decisions in a way that builds and maintains relationships as well as promotes trust in both decision-makers and the decision-making process.

ETHICS AND CONFLICTS OF INTEREST

Principles of Public Service Ethics

California has a complex set of ethics laws to guide local officials in service to their communities. Commissioners, in their capacity as an appointed official, should strive to keep the following principles in mind when determining the appropriate course of conduct in their decision-making:

- Public officials may not use their position for personal financial gain, nor does it entitle one to personal advantages/perks.
- Merit-based decisions based on fair process produce the best results for the public.
- Transparency in the decision-making process promotes public trust and confidence.

Minimum Standards

It is important to keep in mind that ethics laws are minimum standards. It is not possible to write laws to prevent all actions that could weaken the public's trust. Just because a given course of conduct is legal does not mean that it is ethical (or that the public will perceive it as such).

The California Political Reform Act

Most financial conflict of interest laws are contained in the California Political Reform Act. It states that a financial conflict of interest may exist when a person influences a decision that will materially affect an economic interest connected to you or your immediate family.

A commissioner may “influence” a government decision when he/she makes or participates in making; or when he/ she attempts to use his/ her official position to affect the outcome of a decision. Often, it is not enough just to abstain from voting on a matter in which you have a conflict of interest – the law requires that you completely refrain from all participation or attempts to influence the outcome.

Economic Interests and Disclosure (Form 700)

The Political Reform Act requires every city in California to adopt a conflict of interest code. The code is intended to ensure that decisions are made by public officials openly, honestly, and free from the motivation of personal gain. Many members of Davis' commissions are identified as decision-makers subject to its conflict of interest code. If you are a member of one of the advisory bodies listed below, you must refrain from participating in discussions in which you have a financial interest, and are required to file a Form 700 “Statement of Economic Interests” on a regular basis:

- Bicycling, Transportation, and Street Safety Commission
- Civic Arts Commission
- Finance and Budget Commission
- Historical Resources Management Commission
- Natural Resources Commission
- Open Space and Habitat Commission
- Planning Commission



- Social Services Commission
- Tree Commission
- Utility Rate Advisory Commission
- Personnel Board

Your Form 700 must be completed and filed with the City Clerk's Office at the following times:

- Within 30 days after appointment (Assuming Office Statement)
- On April 1st of each year while serving on the commission (Annual Statement)
- Within 30 days of leaving office (Leaving Office Statement)

You must complete and return a Form 700 even if you have "no reportable interests" to disclose. Failure to file on time may result in a penalty of \$10 per day for late filings (up to \$100), suspension and/or removal from the commission. Instructions and the period covered by each type of statement are included with the forms used for filing.

For most people, filling out a Form 700 will be an easy experience provided you read the instructions carefully. However, questions are bound to arise, especially if you have financial interests in addition to the income from your job, residence, or loan obligations. Commission members can contact the FPPC or the City Clerk's Office for assistance. Form 700s are public records.

What to Do If You Have a Conflict of Interest

If a member has a conflict of interest, the member must disqualify him or herself from participating in the matter. This includes all discussion on the matter as well as the actual vote.

You must take the following steps after you have determined that a conflict of interest exists under the Political Reform Act:

1. **Publicly identify the financial interest.** This must be done in enough detail for the public to understand the financial interest that creates the conflict of interest. Residential street addresses do not have to be disclosed.
2. **Recuse yourself from both the discussion and the vote on the matter.** You must recuse yourself from all proceedings related to the matter.
3. **Leave the room until the matter has been completed.** The matter is considered complete when there is no further discussion, vote or any other action.
Exception: If the matter is on the consent calendar, you do not have to leave the room.
Exception: If you wish to speak during public comment, you may do so, but this is the only time when you may be in the room while the matter is being considered.

What to do if you're in doubt

Whenever a member of a city board, commission or committee believes that there may be an economic conflict of interest, he/she should seek an opinion from the City Attorney or Fair Political Practices Commission. At any time, it is safest to err on the conservative side and to publicly identify the conflict, and follow the rules on disqualification.

Other Ethics Laws

Other conflict of interests laws prohibit commissioners from:

- Using his/her official position for personal benefit or gain.
- Having a financial interest in any contract or grants made or recommended by their commission.
- Engaging in employment or activities that are incompatible with their public office duties.

**AB1234 Training**

AB1234 (the Local Government Sunshine Bill) requires designated city employees and appointed/elected officials to take two hours of local ethics training every two years. Ethics Training recommended for members of commissions that have Form 700 filing obligations. The City of Davis, in collaboration with the City Attorney's Office, hosts regular Ethics Trainings which cover general ethics principles (public interests, fairness, etc.) and laws (conflicts of interest, use of public resources and funds, etc.).

CHAPTER 3

COMMISSIONER ROLES AND RELATIONSHIPS

ADVISORY ROLE

The primary role of city of Davis commissions is to review and make recommendations to the City Council on matters within the commission's scope of responsibility as set forth in the enabling resolution/ordinance, and to promote increased public awareness, public input and citizen participation into the determination of city policies. The specific role of a city of Davis commission is that of citizen's advisory "arm" of the City Council, focusing attention on specific planning and program activities of the city. On specific matters referred to them by the City Council, commissions serve as the reviewing body of the city. All recommendations, however, are subject to approval and revision of the City Council.

City Council

Relationship to Council

Members of city commissions are sometimes referred to as the "eyes and ears" of the City Council. They serve an important role in extending the reach of the democratic process into the community. Even though the Council relies on the work of city commissions, there should be no confusion about the separate roles of each.

Commissioners are not appointed to relieve elected officials of making political decisions. Commissioners should avoid trying to predict actions or votes of individual Council members, however this does not preclude them from interpreting elected officials' philosophies.

Commission members should also recognize that the elected body's jurisdiction is much broader, and in some cases the commission's recommendations may not be followed. Commissioners should not interpret this as a rebuke but rather an inevitable part of the process. You may disagree with the City Council on any matter, but once the Council has established its position, your actions as a commissioner should not be contrary to the adopted policies and programs. If problems arise because of differences between Council decisions and the personal values of a commission member, which would interfere with continued board/commission service, resignation from the board/commission is the appropriate response.

Commission Recommendations to the Council

Commissions may submit items to the City Council to be placed on the Consent or Regular Calendars of the Council agenda. Commission proposals to the City Council should be provided in writing via the staff liaison or department of the staff liaison, and should represent the views of the commission as a whole. Action items should contain a specific recommendation for Council approval, adoption or authorization. Recommendations should be clear about who is taking action

and what the action will accomplish. Informational reports advise or inform the Council on a subject or commission activity, but does not request any action or report by the Council. A report to Council should state the full commission motion and the list how each commissioner voted in its decision-making process. These reports should also include the completed minutes from the commission meeting(s) at which the subject matter of the report was discussed. Action or informational reports aside, commission minutes should be routinely forwarded to the City Clerk's Office to be placed as a (stand alone) informational item to Council.

The City Council has determined that Council members should not lobby commissioners for particular votes. However, Council members may request that commissioners consider certain issues during their deliberations.

City Council Liaisons to Commissions

Each member of the Council is assigned to serve as a liaison with one or more city commissions. The purpose of the liaison assignment is to facilitate communications between the City Council and the advisory body. The liaison also helps to increase the Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, Council Members may elect to attend commission meetings periodically to observe the activities of the advisory body or simply maintain communications with the commission chair or staff liaison on a regular basis.

Council members are not participating members of the commission, but are there to create a linkage between the City Council and commission. In interacting with commissions, Council members are to reflect the views of the full Council body. (*Procedures Manual for Council Members*)

Joint Discussions/ Meetings with the City Council

Periodically, the City Council may choose to meet with a commission. These meetings may focus on a specific issue or issues, or they may more generally cover topics of mutual interest to the two bodies. The meetings may be joint discussions at a City Council meeting or may be a joint meeting between both bodies. The staff liaison and the Council liaison will work with the commission to prepare for the meeting.

Staff Liaison

Duties of the Staff Liaison

The City Manager designates staff to serve as the staff liaison to city boards, commissions and committees. Generally, the staff liaison is appointed from the department in which the commission is housed. The staff liaison attends all meetings of the commission, prepares the agenda, acts as technical advisor, and finalizes the minutes for the commission's approval at its next meeting. Requests for information or support should be directed to the staff liaison, not directed to other city staff.

More importantly, the staff liaison must at all times consider the policy and fiscal impacts of proposals and provide commissioners with early and timely information about not only the fiscal and policy impact of a proposal in and of itself, but its relationship to overall department and

citywide fiscal capacity and priorities. Commission liaisons must be constantly aware of the responsibility to represent overall Council priorities and administrative policies of the City.

The staff liaison has a responsibility to:

- Keep the commission informed of changing policies, procedures, and Council goals, to suggest methods to accomplish these goals, and provide resources for the commission to seek out information or solutions to a problem.
- Provide background and context on a subject.
- Post the agendas and minutes in a timely manner.
- Educate new members about their role and responsibilities, and at times, coach individual commission members to encourage participation and develop their skills.
- Keep the board, commission or committee focused on priorities.
- Take initiative to inform commissioners about activities, projects and work that is taking place elsewhere in the organization and among other commissions, especially in areas that may overlap with items up for discussion on commission agendas.
- Present a balanced report on controversial issues, so that both positive and negative aspects can be readily identified. To this end, staff liaisons must also alert the commission of possible detrimental actions.
- Respond in a timely and professional manner to requests made by individual commissioners for information and assistance. Staff responses to individual commissioner comments/questions should be distributed to all commission members if the liaison believes the material may be of interest. If a commission desires information or a report that will require an excessive amount of staff time, the commission should present the request to the Council for approval. The Council may then consider the request in the context of current Council goals and determine the priority of the request. Following this procedure will prevent staff from diverting from priority projects.
- Ensure that motions and minutes accurately reflect the actions taken and the intent of the commission at the meeting.

Relationship Between Commission and Liaison

The staff liaison's responsibility is but one of many tasks assigned to that staff person. While the liaison's role is to assist the commission, the liaison and other staff are not employees of the commission. At all times staff is directly responsible to their department director and to the City Manager. Commissioners should realize that the assigned staff person reports directly to a supervisor and may not be able to carry out every recommendation or request that the commission may have. Commissions may set priorities for their own agendas and work plans, but must keep in mind that the liaison is responsible for allocating his/her time and efforts according to his/her role as staff.

The following are recommended ways to avoid misunderstandings and to keep the channels of communication open:

- All contacts from commissioners to other members of staff should include or be transmitted through the staff liaison. Conversely, all contacts from City staff to the commission should also go through the liaison.
- Contacts with staff members should clearly be in the framework of the commission's function/scope.
- Citizen complaints received by commissioners should be referred directly to the staff liaison.
- Citizen correspondence received by commissioners should be forwarded to the staff liaison for record keeping.
- Commissioners who wish to share information with the rest of the Commission should do so at commission meetings, or through the staff liaison who will determine the appropriate method of distribution- which may include a formal agenda item for commission discussion.
- Commissioners shall not ask for individual reports, favors, or special considerations. At times, members of the commission may wish to review additional documents or receive special reports. Staff should only fulfill these types of requests if the full commission comes to a consensus that they wish to receive this information. Commissioners should not ask staff to commit staff time for work that has not been budgeted or has not been approved by their Department Director or the City Manager.
- It is not expected that every staff recommendation will be approved; however, based on the technical knowledge of staff, consideration should be given to their proposals and recommendations. If the commission does not agree with the recommendation put forward, staff will report the commission's stance on the issue to the City Council. In addition, staff has the option of making his/her original recommendations to the Council through the City Manager.
- Treat all staff as professionals. Acknowledge the abilities, skills, experience and dignity of every employee of the city of Davis. Recognize that staff liaisons also value their family and personal time. Accordingly, contacting staff during non-working hours is generally discouraged.
- Commissioners should not criticize or embarrass city staff in a public setting. If you have a concern about staff performance, it should be brought privately to the staff member's Department Head or City Manager.

RELATIONSHIPS WITH OTHER COMMISSIONS, OUTSIDE AGENCIES, GENERAL PUBLIC

Other Commissions

Commissions may, from time to time, wish to receive a report on a particular item from another commission's agenda, or communicate with the commission on a particular item/topic. A member from one commission may elect to attend another commission's meeting and report back to the commission they serve. Members electing to attend other commission meetings are not permitted to partake in meeting discussions with that commission as an official commission member would. Members attending meetings in order to communicate with another commission may do so during the public comments at that meeting.

Joint Commission Meetings

Two or more commissions may hold a joint meeting to discuss an issue that falls under the purview of multiple commissions. While it may be noticed as a "Joint Meeting," in practice it is really two separate meetings occurring at the same place and time. The staff liaison for each commission must prepare separate agendas and post them accordingly. During the meeting, each commission must vote independently on each agenda item. Staff liaisons for each commission shall prepare separate minutes for the meeting as well.

Outside Agencies

Interjurisdictional Bodies (Davis Joint Unified School District, UC Davis, Yolo County)

When a commission wishes to correspond with an outside agency, correspondence should be either coordinated with efforts of the City Council or reviewed and approved by the City Council.

Requests from an outside agency for commission support or opposition on matters should either be in accordance with official city policies or stances on issues, or reviewed and approved by the City Council. Request for commission representation on an advisory body (i.e. a member from the commission serves as city representation on a County or DJUSD Committee) should be authorized by City Council and incorporated into the commission enabling documents.

Community Groups / Non-Profits

Commissioners may, from time to time, be approached by community organizations relating to matters under the purview of the commission. It is not uncommon for community groups to present proposals and recommendations for commission review. Such proposals should be referred to City staff for analysis.

Commissions should not present proposals to the City Council through community organizations. This method of advancing proposals, especially those without further analysis from City staff,

carries the political influence of that organization, which puts the Council in a difficult position to consider the proposal on its merits alone.

Developers

Large projects/applications may come before commissions as part of the City's normal review process. At times, individual commissioners may be approached by developers or applicants in order to lobby approval for their projects. If a member of a commission meets privately with an individual or entity that has an item coming before the commission, the member should do so without making voting decisions or commitments. Equal opportunities and due process must be extended to all parties in matters under consideration. Commissioners may wish to disclose such contacts at the commission meeting when the item is discussed. Commissioners are not restricted from engaging in communications with developers or applicants, however they may decide their comfort level with such discussions on a case by case basis. It is also acceptable to decline all invitations or refer them to staff.

Commission Review of Development Proposals

1. In general, when the City receives a development proposal, staff will determine if the proposal is consistent with policies set forth by the City Council and include that determination in its analysis to the decision-making body. When there are inconsistencies with existing policy or when a proposal has outstanding characteristics in a certain area, staff will in a timely manner refer the proposal to the appropriate commissions for review of the proposal and provide information to commissions on specific issues of concern. Commission Review will occur before proceeding to commissions with regulatory authority or City Council.
2. The Planning Commission, Historical Resources Management Commission and Social Services Commission will review development proposals as outlined in the Zoning and Affordable Housing Ordinances. The Senior Commission, using the Guidelines for Housing that Serves Seniors and Persons with Disabilities, may review affordable housing plans consisting of 5 or greater affordable housing units and all senior housing projects. The Finance and Budget Commission will review fiscal and budgetary implications to the city of development proposals.
3. Recommendations on policy matters, such as new ordinances, will generally be made by the Commission with the most explicit or direct policy purview, even if the policy affects private development.
4. Rather than make an endorsement for, or state opposition of a development proposal in its entirety, a commission should provide the pros and/or cons of a project relative to their specific area of expertise. (This does not apply to commissions that may have review authority on a proposal, such as the Planning Commission or Historic Resources Management Commission.)
5. Where appropriate and feasible, the Council encourages commissions to hold joint meetings with other commissions to receive presentations for development proposals.

Media

Most members of city commissions have limited contact with the news media. However, there may be situations in which a member of the media may contact you for comment on “hot button” issues or “big ticket” items appear on commission agendas.

Commissioners should be aware that statements or opinions made to members of the media are considered on the record by reporters. You do not have to answer media questions just because they are asked. “No comment” is legal and at times preferable. Refer the media to City staff or Council members.

It’s safest to never “go off the record.” Most news professionals will honor an agreement to not quote you, but there is potential for embarrassment. Words that are not said cannot be quoted. Choose words carefully and cautiously. Comments taken out of context can cause problems. Be cautious about humor, sardonic asides, criticism, sarcasm or word play.

Be clear when you are speaking as an individual, and not on behalf of the commission, the City Council or the city in general. If it is a subject that is going to come before your commission it is probably inappropriate to be talking about it to the media.

General Public

Commissioners are encouraged to seek out and become aware of public opinion relating to their field of influence and to welcome citizen input at commission meetings. Spreading word of citywide opportunities and resources to increase citizen involvement is encouraged.

Commissioners are reminded that they are representatives of the City of Davis. The City serves a diverse population and has specific policies against discrimination. Statements that can be interpreted as discriminatory against any group should be avoided, at all times.

Commissions have the obligation to consider the benefit of the entire City, to be fair, objective and courteous, and to afford due process to all who come before them. In addition, public statements by the commission or individual commissioners should contain no promises to the public that purport to be binding on the commission, staff, or City Council.

Commissioners may interact with the public outside of meetings, however, they should encourage citizens to send their comments to the staff liaison for distribution to all commissioners or come to a meeting and speak during public comment. This allows the full commission to hear and consider all pertinent information and points of view. For information on dealing with members of the public during meetings, please see the section on [“Public Comment”](#) (Chapter 5).

All communications from the commission to members of the public must be transmitted through the commission staff liaison, whether directly or copied on all e-mail correspondence. Similarly, arriving communications should also be received by staff liaisons. Official responses to citizen inquiries must be approved by the full commission and/or sent via the staff liaison.

ENDORSEMENTS AND COMMUNICATIONS

Endorsements/Political Activity

Serving as a commissioner does not restrict you from participating in political activities at any level of government, whether local, state or federal. However, if you do take a position on a political issue outside of the role of commissioner, it is important to take steps to assure a distinction between your personal viewpoints and positions of the commission. You may use your title as a commissioner for identification purposes only when participating in these activities, and you **MUST** make it clear that you are not representing or speaking on behalf of the commission. Further, a commissioner may not use public resources for personal gain, including political gain, or support of campaign activity for a candidate or ballot measure. Please contact your staff liaison and/or the City Clerk's Office if you have questions regarding political activity by individual commissioners or your commission.

Commission Signed Documents/Communications

Commissions may be called upon to write letters to citizens, businesses or other public agencies. Correspondences from the commission must be co-signed by the chair and the mayor. Commissioners from time to time may correspond with citizens in response to inquiries or provide requested information. In these circumstances, members should clearly indicate within the letter that they are not speaking for the commission, but for themselves as a member of the commission.

Official communications and use of the City logo is restricted for use by City staff only. The logo may not be used for other purposes unless otherwise approved by the City Council and/or City Manager.

When a commissioner speaks before a public body, the commissioner needs to inform the agency they are speaking for the commission and has been authorized to speak for the commission. If a commissioner is not speaking in an official capacity they must explain they are speaking for themselves

CHAPTER 4

MEETINGS AND PROCEDURES

THE BROWN ACT

The Ralph M. Brown Act (“Brown Act”) is a state law that applies to any “legislative body” in the State of California. Under Gov. Code Sec. 54952(b), commissions, committees, boards or other bodies of a local agency, whether advisory or decision-making, temporary or permanent, created by charter, ordinance, resolution or formal action of the legislative body (the City Council), are themselves considered legislative bodies. To this end, every task force, committee or other advisory group is likewise a “legislative body,” if it was created by formal action of the Council.

The purpose of the Brown Act is to ensure that the public has adequate notice of what its elected and appointed officials do, and that their decisions and deliberations also take place in public. The full text of the Brown Act is available to you ([Appendix B](#)) as well as a summarized guide “Open & Public V” ([Appendix C](#)) to supplement the basic information provided in this section. It is advisable that you review both documents thoroughly, as this section will provide only a basic understanding of topics, including:

- 1) What constitutes a public meeting
- 2) Types of public meetings
- 3) How meetings are noticed to the public
- 4) How meetings should be conducted (meeting procedure)

What Constitutes a Public Meeting

A “meeting” for which public notice must first be given is defined as any gathering of or communication between a quorum of the members of a local body at the same time and location to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of that body.

Quorum

A quorum is the minimum number of members that must be present for a group to conduct business. A quorum is one more than a majority (or, often, one more than half) of the authorized seats on the commission. The number needed for a quorum does not change because of vacancies on the commission. For a seven-member commission, a quorum of four must be present. For a five-member board, a quorum is three members.

If a quorum is not achieved after 15 minutes from the start time of the meeting, the meeting should be cancelled. Present commissioners should not discuss any agenda items.

If at any time during discussion, a commissioner leaves the dais and the remaining membership seated is less than a quorum, the Chair should immediately either recess or adjourn the meeting. If a member must leave the room because of a conflict of interest resulting in the membership seated as less than a quorum, then the item must be continued to a later time or date when a quorum of members may be present to discuss the item.

Serial Meetings Prohibited

Members should be cautious about discussing commission business outside of a formal meeting with other commissioners to avoid engaging in a serial meeting. “Serial Meetings” occur when a quorum or majority of the members of a local body 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 local body outside of a formal meeting. Serial meetings are prohibited under the Brown Act.

Most frequently, serial meetings can occur in email correspondence. It is very important that you restrict your communications with fellow commission members or City staff to avoid reaching a consensus outside of a noticed public meeting. It is advisable not to use “Reply All” on any email correspondence from staff or members of the public if all members of the commission, or a quorum thereof, are listed recipients.

Serial meetings can also occur if staff or a commissioner acts as a hub by reaching out to individual commissioners to develop consensus regarding an item of business, even if the members never communicate to each other directly.

Exceptions - Gatherings That Are Not “Meetings”

You are not precluded from attending community meetings or conferences; or attending purely social, recreational, or ceremonial occasions at which a majority of the commission may be present - so long as you do not discuss business items within the jurisdiction of your board or commission.

Types of Public Meetings

There are two types of public meetings you should be familiar with: Regular Meetings and Special Meetings. Each has its own requirements, as discussed below:

Regular Meetings

All boards and commissions must take formal action (by a motion and vote) to establish a regular time and place for holding regular meetings. (For example: "7:00 p.m. on the first Monday of every month at City Hall"). Regular meetings must be noticed to the public at a minimum 72 hours in advance.

Special Meetings

Special meetings may be called by the chair or a quorum of the commission and coordinated through the staff liaison. Written notice must be given to the commissioners and to the media 24 hours prior to a special meeting. Special meetings are discouraged by the City Council and should be used only when necessary, under extraordinary circumstances.

Special meetings may take place at a date, time, or place that deviates from the regular meeting schedule. The main difference between a regular meeting and a special meeting is the type of business that is conducted at each meeting. Special meetings agendas should be focused on the specific matters requiring immediate action, and not include non-urgency items such as commission communications, subcommittee or liaison reports, or approval of minutes. Public comment during special meetings is restricted to only those items/topics specifically listed on the agenda; general public comment on matters not listed on the agenda is prohibited.

How Meetings are Noticed (Agendas)

An agenda for each meeting of a city commission is prepared by the staff liaison in consultation with the chair. The agenda outlines the topics or items of business that will be introduced, discussed, and acted upon at each meeting. Regular meeting agendas must be posted at least 72 hours prior to the meeting in order to comply with the Brown Act.

Agenda Format

All commissions shall use a standard agenda format, as provided by the City Clerk's Office. All agendas should contain the following information:

- Name of the legislative body
- Meeting Date, Time, and Location (common name and address)
- Names of all commission/committee members
- Name of primary staff and/or staff presenters
- Items to be discussed at the meeting. Agenda items need to be descriptive enough that the general public may understand what matters are to be discussed and potentially decided upon at the meeting.

A sample agenda for both regular and special meetings are provided as [Appendix D](#).

Placing Items on the Agenda

A commissioner may request an item be considered on a future agenda and, if it falls within the commission's subject matter jurisdiction and upon consensus of a majority of the commission, staff will prepare a staff report or presentation if formal commission action is necessary. Timing of items and scope of items may be dependent upon the commission work plan and/or available staff resources.

A member of the public may request an item be placed on a future agenda during public comment or through other communications with staff or commission members, and if it falls within the commission's subject matter jurisdiction and upon consensus of a majority of the commission, a staff report or presentation will be prepared and/or approved by the staff liaison. Again, timing and scope may be dependent upon other matters currently underway.

Discussion of items to be placed on future meeting agendas may take place at each meeting during a Long Range Calendar/Upcoming Meeting Dates item, most commonly discussed prior to adjourning the meeting.

Adding Emergency Items to the Agenda

In rare cases, an item may be added to the agenda if there is a need to take immediate action on an issue which came to the attention of the City less than 72 hours before the meeting.

The Brown Act defines an “emergency” as “work stoppage, crippling activity that severely impairs public health, safety or both...”. Should such an issue arise, the staff liaison will work with the City Clerk’s Office and the commission to ensure it is agendized correctly. To add an emergency item, the commission may only do so by a two-thirds vote (of the total authorized membership), or by unanimous vote if less than two-thirds of the members are present. Time permitting, the commission may choose to schedule a special meeting at a future date for which at least a 24-hour notice can be issued to the public.

Cancellation of Meetings

A meeting may be canceled if there are no items requiring commission input. If this happens, staff will post a notice of cancellation. A notice of cancellation should be posted at least 72 hours prior to the meeting whenever possible, or as soon as it is known that the meeting will not occur.

A meeting will also be cancelled if there is not a quorum of members in attendance at a regular or special meeting. It is important that commission members notify staff as soon as possible if they will be unable to attend any meetings. The Chair should wait no more than 15 minutes from the official start time of the meeting for late members. After 15 minutes, if a quorum is still not achieved, the meeting should be cancelled. Present commissioners should not discuss any agenda items.

List of Persons Requesting Mailed Notice

Any person who requests a copy of the agenda and agenda packet must receive a copy at the time that these materials are posted or distributed to a majority of the members of the commission.

The City of Davis has implemented an e-mail list serve to provide an easy way for individuals to continuously subscribe to receive agendas for any/all city commissions. Individuals may sign up for the City list serve online (cityofdavis.org). This service continues until the individual unsubscribes him/herself from that commission mailing list.

Any request for mailed hard copies of agendas or agenda packets are subject to a fee equal to the cost of providing the service, and must be renewed each calendar year.

Agenda Packets

Agendized items may or may not include a written staff report. If provided, staff reports should be modeled after the format used for City Council.

Items prepared by staff for agendized items (i.e. supplemental reports and/or presentations) after packet delivery will be posted online with the rest of the meeting materials as soon as possible. Hard copies of any documents provided at the meeting must be made available for

public review during the meeting; any requests for copies of these materials must be provided within one business day of receipt of the request.

Public communications on agenda items that are received by staff either via email or hard copy will be provided to commissioners prior to the start of the meeting, generally several hours ahead of time to allow for review. Late communications received prior to the meeting may only be available in hard copy. All such communications are public records and will be maintained accordingly and/or provided upon request.

Location and Accessibility of Meetings

Location

Commissions establish a regular meeting day, time and location. These should be occasionally reviewed to ensure that they meet the needs of the commission to conduct business effectively.

The City of Davis provides meeting facilities at several locations. Each location differs in size and amenities. Meeting rooms often used are:

- Community Chambers at City Hall (23 Russell Boulevard)**
- Community Chambers Conference Room (23 Russell Boulevard)
- Hattie Weber Museum (445 C Street)
- Senior Center Valente Room (646 A Street)**
- Senior Center Activity Room (646 A Street)*
- Senior Center Multi-Purpose Room (646 A Street)**
- Veterans Memorial Center Game Room (203 E 14th Street)*
- Veterans Memorial Center Club Room (203 E 14th Street)*
- Veterans Memorial Center Multi-Purpose Room (203 E 14th Street)*

* amplified sound available

** amplified sound and listening devices readily available

Some meeting rooms have a conference room setting. Members of the commission should be seated together, and staff may also sit at the table. However, to maintain order and reduce the risk of individuals speaking out of turn, members of the public should not be seated at the table. There should be a separation between the commission, staff, and members of the public.

Accessibility

All meeting facilities must be ADA accessible, this includes consideration of doors (unlocked, automatic), building/structural concerns (i.e. stairs, elevators, ramps, etc.), meeting room layout (walkway width, access to chairs and doors), etc. If the accessible entry or path of travel is other than the main entrance or walkway to the meeting location, such information and directions should be noted on the agenda or clearly posted at the building location.

Listening devices are available for use in some meeting rooms. Upon request, staff will make appropriate accommodations for members of the public who require listening assistance. If possible, notice should be received by staff at least 24 hours in advance of the meeting. If less time is provided, all reasonable efforts will be made to accommodate.

Closed Sessions

Closed sessions are not allowed except as authorized by the Brown Act. In general, only the City Council/Redevelopment Successor Agency and the Personnel Board hold closed sessions.

MEETING PROCEDURE

Parliamentary Procedure and Rules of Order

City commissions follow a modified version of Rosenberg's Rules of Order, Simple Parliamentary Procedures for the 21st Century as adopted by the City Council. The adoption of rules was undertaken to simplify procedures. A scaled-down and modified version is appropriate for commissions. It is highly recommended that commissioners thoroughly review these procedures, provided as [Appendix E](#) to this handbook.

The use of parliamentary procedure:

- Promotes cooperation and harmony so that people can work together more effectively to accomplish their goals.
- Guarantees each individual an equal right to propose motions, speak, and ask questions and vote.
- Protects the rights of minority points of view and gives the minority the same consideration and respect as those in the majority.
- Encourages the full and free discussion of every motion presented.
- Ensures that the meeting is fair and conducted in good faith.

Order and Decorum

Members should accord the utmost courtesy to each other, to city employees, and to the public appearing before the commission, and should refrain at all times from (1) rude and derogatory remarks, (2) questioning the integrity of the speaker, (3) abusive comments, (4) statements about the member's personal feelings about the speaker's motives, and (5) personal attacks.

Any member may move to require the chairperson to enforce the commission rules; the affirmative vote of a majority of the commission will require the chairperson to so act.

Members of the public attending commission meetings are expected to observe the same rules of order and decorum applicable to members. Any person speaking out of turn, or otherwise disrupting the commission's ability to conduct business, may be asked to leave.

Establishment of Meeting Rules

Some commissions conduct their business according to an established set of procedural guidelines. Guidelines may include, but not be limited to, how reports and/or presentations are presented to the commission, how the commission makes recommendations to the City Council, procedures for public comment, etc. An example of commission-created procedural guidelines are provided as [\(Appendix F\)](#).

City Council Ground Rules

The City Council has also established Ground Rules and basic protocol for meetings. A copy of these Ground Rules is provided as [\(Appendix G\)](#).

Chair: Running a Meeting (Presiding)

It is the Chair's role to facilitate meeting protocol, ensuring that meetings are conducted in an orderly and timely manner. 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 amongst the commission and with the Chair.

Some key things to keep in mind:

- **Start meetings on time.** Do not begin the meeting unless a quorum of members are present. The meeting should be cancelled if a quorum cannot be obtained after 15 minutes from the official start time of the meeting.
- **Explain the process.** Keep in mind that people may be attending a meeting for the first time and may be unfamiliar with the advisory body procedures. Announce agenda items and explain the process for receiving presentations, public comment, hearings, etc. at the beginning of each item.
- **Maintain order.** Do not allow members of the public to clap, cheer, whistle, and so on, either for or against testimony that is being presented or in response to comments by commission members during deliberations. The chair should "gavel down" this kind of behavior and run an orderly meeting. The chair should also not permit members of the commission to accuse or overtly challenge one another or any members of the public. To this end, dialogue between commission members and persons testifying should be limited to fact gathering which will contribute to the commission's decision-making ability.
- **Manage public comment.** Members of the public should not speak out, except on their turn during an opened public comment period. Public comment should be held to a reasonable length of time, particularly if a large number of people want to address the commission. Individuals requiring use of a translator must be allowed at least twice the amount of time for comment. The chair should discourage successive speakers from repeating the same testimony over and over again. While there is a need to keep the comments moving in a timely manner, the commission must be fair, impartial, and respectful. Give your full attention when others speak. Once the public comment period has been closed, only commission members or staff are permitted to speak on the item.
- **Understand parliamentary procedure.** The chair must understand order of business, making motions, amendments to motions, what is or is not debatable, and so on.
- **Manage Discussions** Commissioners should try not to speak more than once on an item until every other member has had an opportunity to speak. Commission members are encouraged to discuss items during the decision-making process and may ask staff to respond when appropriate. The Chair should allow other members to speak first and then give his/her views and summarize.

- **Keep the business moving.** The commission should not endlessly mull over matters, continuously request new information, and/or otherwise delay making a decision when the information needed for doing so has been presented. The chair should move the meeting along by summarizing the facts and the positions presented by commission members, and bring matters to a vote or bring the discussion to a close.
- **End meetings at a reasonable hour.** Keep the agenda in mind in order to give each item the appropriate time. Be mindful of how many items have yet to be heard.

Public Comment

Any member of the public is welcome to address the commission regarding matters listed on the meeting agenda. Regular meeting agendas will also include a general public comment time for people to comment on any item of interest that is within the commission's subject matter jurisdiction, regardless if it is or is not agendaized. Speakers will be asked to state their name for the record, although it is not a requirement that they do so.

Individuals may only speak one time per item, although the commission may ask that an individual return to clarify a comment that was made. In order to conduct business, the commission will limit the amount of time allotted to public participation. However, the commission may not place similar restrictions on the content of public comments (as long it is within the commission's subject matter jurisdiction), including prohibiting members of the public from expressing negative or critical comments of the City, staff, its legislative bodies, policies, procedures, or programs; such actions are a violation of their first amendment rights.

Time limitations

Comments are usually limited to no more than 3 minutes per speaker per item. Individuals representing a recognized group or organization may be allowed up to 5 minutes. The commission may adjust the time limits allowed to speakers depending upon the number of public in attendance (i.e. if more than 10 people want to speak on an item, the commission may limit to 1 or 2 minutes per comment). Procedure and time limits for public comment must be announced at the beginning and uniformly enforced for the duration of the comment period.

AB 1787 – Open meetings: public comments: translation.

If the commission limits time for public comment during a meeting, a member of the public who utilizes a translator must be provided at least twice the allotted time for comment; unless simultaneous translation equipment is used. This ensures that non-English speakers receive the same opportunity to directly address the legislative body.

General public comments vs. agenda item comments

Every regular agenda will have a designated item dedicated to receiving general public comments on any items on/off that meeting agenda. It is suggested that members of the public address comments regarding the consent calendar, communications, long range calendar/work plan, or any items not listed on the agenda during this comment period. The commission should take comments on regular/business agenda items upon discussion of those items.

Public Member Items Submitted at Meetings / Presentations

Applicants and members of the public may provide documents to the commission and/or request to provide a short presentation during public comment. Requests for showing a presentation must be received by staff at least 24 hours in advance of the meeting, and a presentation file must be received prior to the start of the meeting to ensure it is ready when that individual stands up to give their comments. Please note, audiovisual (AV) equipment is limited and may not be available in all meeting facilities; members of the public are encouraged to discuss options with staff prior to the meeting date.

Public Hearings

This section is specific to meetings held by the Planning Commission, Historical Resources Management Commission, and Social Services Commission.

Where a public hearing is mandated by law, additional noticing requirements to affected parties may be applicable depending on the subject matter of the item and anticipated actions to be taken.

Hearing Procedures

When conducting a public hearing, procedures may depend on the subject matter and time available. Generally, a public hearing is the first regular item heard on an agenda, following the consent calendar. Hearings are run in a quasi-judicial fashion, and minimum requirements for receiving testimony must be met. These include but are not limited to an introduction by the liaison or the chair, testimony by affected parties, interested citizens and presentation of documents.

On occasion, the commission may wish to recall the applicant to clarify remarks for the commission, however, this does not re-open a public hearing, and no further public testimony is allowed. Legal issues may arise if the commission appears to base a decision on statements made by the public after the public hearing is closed. Hearings should be formally declared open by the chair and are formally closed after hearing all testimony.

Any action resulting from the hearing must be clearly stated for the record. If no action is taken, it should be announced by the chair and advise the public of when action is expected to take place. If the item must be postponed, the commission must determine an exact date and time when the hearing shall return to the commission.

MOTIONS AND VOTING

Motions

A motion is the way that a group under parliamentary procedure conducts business and makes decisions. There are several types of motions, each of which must meet certain requirements before a vote can be taken. A full and complete guide to types of motions and rules are found within Rosenberg's Rules of Order.



Steps in making, discussing and voting on a motion:

- The maker of the motion asks for recognition by the Chair, or the Chair may solicit a motion from commission members
- After the individual is recognized, he/she will state "I move ..."
- The Chair will ask if there is a second. Another member of the group must second the motion in order for discussion to start on the motion.
- The Chair then restates the motion "It has been moved and seconded that ..." and opens the floor to discussion.
- The Chair will recognize members who wish to comment on the motion. Only one motion may be discussed at a time. It is important that all members of the group are clear on what the motion is and what its effect will be. Spirited discussion helps to answer questions and explore different interpretations and/or impacts of the motion.
- At the end of the discussion period the Chair will "call the question" and ask how many members vote "Aye" and how many vote "No" or "Abstain". A motion is passed when a majority of members present votes in favor of the motion (members who recuse themselves due to a conflict of interest must leave the room, are not counted toward establishing a quorum or tallying votes).

Phrasing a motion can be difficult and corrections may be necessary before it is acted upon. Commissioners may wish to write out motions beforehand or ask staff to prepare a draft motion.

Friendly Amendments

The "Friendly Amendment" is an informal method for commissioners to request a minor change to the motion on the floor (while retaining the basic form of the original motion). A commission member may propose a friendly amendment, which must then be accepted by the main mover and seconder. Friendly amendments should only be used for minor adjustments, such as adding a word or phrase to the motion. Significant changes to a proposed motion should be proposed as a substitute motion, not as a friendly amendment or motion to amend.

Substitute Motion

At any time after a motion is moved and seconded, a member of the commission may move a substitute motion for consideration in place of the main motion. If the substitute motion is seconded, then discussion on this motion will take priority over the original motion. The

commission will deliberate and then vote on the substitute motion. If it passes, the original motion becomes moot. If the substitute motion fails, the discussion will revert to the main motion. In the event of multiple substitute motions, the commission should address the latest motion proposed. There should never be more than two substitute motions (or three total motions) on the floor at any time.

Withdrawing a Motion

At any time after formation of a motion and before it is taken to a vote, the maker of the motion may interrupt a speaker to withdraw his or her motion from the floor.

OTHER TYPES OF MOTIONS

Motion to Continue

A motion to continue an item is to continue to another meeting, at a specific time and date. This type of motion requires a second.

Motion to Table

This type of motion is intended to immediately stop discussion and causes a vote to postpone a matter indefinitely or to a time and date certain. A motion to table takes precedence over all motions except adjourn and privilege. A motion to table requires a second. Once an item has been tabled, a motion to un-table the item is needed to bring the item back to discussion.

Motion to Reconsider

A motion to reconsider must be made at the same meeting or within two meetings of the original action. If the motion to reconsider is made at a subsequent meeting following the original action, intent to reconsider the item must be agendized. This type of motion may only be made by a commissioner who voted in the majority on the original motion. It also requires a second, of which any voting member of the commission may do so (not just those who voted in the majority). The motion is then subject to a vote. If the motion to reconsider passes, then the original matter is back before the commission and may be discussed and debated as if it were on the floor for the first time. Motions to reconsider are not applicable to “table” motions. During discussion, testimony should be limited to new facts that were not known at the time of the original motion.

The timelines for motions to reconsider must be strictly adhered to for binding deadlines, contracts, and any quasi-judicial matters. Policy related matters may allow for additional flexibility, but that type of circumstance will require specific staff analysis and/or city attorney consultation.

Voting

When present, all commissioners are to vote. Failure of a seated commissioner to orally express a vote constitutes an affirmative vote.

Members of city commissions are expected to participate in all decisions of their commission. There are two primary exceptions – a defined conflict of interest when a member must recuse themselves and leave the room, or due to a fairness issue such as personal animosity between the member and an individual appearing before the group. In all cases, care must be taken to ensure the fair, impartial deliberation process by the board, commission or committee.

Absence does not automatically disqualify a member from participating in a vote on an issue. If a member misses all or part of the proceeding in which information about the issue was presented, he/she can become familiar with the record of the meeting such as through minutes, studying the staff report or recorded version of the meeting, or discussions with staff.

Commissioners with a conflict of interest must step down, leave the room and not participate in the discussion or vote on the item; these members are considered “absent” for that item and may not be counted either for the purposes of establishing a quorum or for the tallying of votes. The majority of members (present and voting) must vote in the affirmative of the motion for it to pass. Commissioners are never required to state reasons for a dissenting or supporting vote.

Calling the Question

The Chair will call the question once it has been determined that discussion has reached a point where the commission is ready to vote. Generally, commissions will take a “voice vote” (see below). Commissioners may also declare a consensus on an action if there is agreement and no negative comments/objections have been expressed during discussion. If it is unclear whether a majority exists, or upon request of any commissioner, a roll call vote should be taken and recorded (see below). In any scenario, the Chair should announce the results (motion passes/fails) once votes are tallied.

Voice Voting

The Chair will state, “all those in favor” at which point members may altogether say “aye” or “yes”, the Chair must then state, “all those opposed” and allow for opposing members to state “no” altogether. Keep in mind, failure to orally express a vote constitutes an affirmative (or “yes”) vote.

Roll Call Votes

A roll call vote is generally used if there appears to be a division amongst members on an issue. This type of vote is especially preferable when making decisions on controversial items. The Chair or staff liaison may conduct the roll call. Each member will be identified, in any given order, followed by that member stating his/her vote.

Tie Votes

A tie vote is not a majority affirmative vote, and therefore is equivalent to a vote that has failed. The chair should publicly explain the effect of the tie vote for the public.

Abstentions

Abstentions count! A member who votes “abstain” is considered present and is counted toward the overall vote (not absent!). Abstentions are counted as a non-affirmative votes, and therefore act just like “no” votes (a motion may only pass with a majority affirmative votes).

What is the Difference? When to Abstain vs. When to Recuse

At times, it may not be clear to commission members whether they should participate/vote on an issue or not. Commissioners should keep in mind that by participating in discussion they have the power to influence the decision.

If a commission member has a defined conflict of interest, he/she must follow the steps for a recusal - see [“What to Do If You Have a Conflict Of Interest”](#) (Chapter 2). They will be counted as “absent.”

If a commission member is unable to act in an unbiased manner, they should also consider recusal and leave the room entirely before discussion ensues. Simply abstaining from voting may not be enough. Commissioners are encouraged to act on their conscience when such scenarios arise.

Abstentions should be rare and based on an inability to decide definitely to vote “yes” or “no” on a specific matter. Again, abstentions are counted toward the total vote and are non-affirmative. An abstention is not counted as “absent.”

SUBCOMMITTEES

Commissions may, from time to time, form subcommittees to focus on specific issues and make the work of the group more efficient. Subcommittees are useful when an issue needs to be studied in detail or when outside expertise is needed. The work and recommendations of subcommittees must always come back to the full commission for approval in a public meeting. Subcommittee reports may be heard during the communications item of commission agendas.

Subcommittees must be made up of less than a quorum of the members of the commission. Subcommittees may not last longer than one year. Subcommittee meetings for continuing or “standing” subcommittees with a continuing subject matter jurisdiction are considered public meetings and must comply with the Brown Act; commissions are not authorized to create “standing” subcommittees. For this reason, it is important that subcommittees report back to the full commission within a year in order for the commission to dissolve the subcommittee or to refine the scope and create a new committee.

Guidelines for Subcommittees

- Clearly define the purpose
- Set deadlines for reports and establish sunset provisions
- Limit the number of members
- Involve all sides of the issue
- Appoint a chairperson
- Require periodic reports

MINUTES AND RECORDING MEETINGS

Meeting Minutes

Minutes of each meeting of a city commission are usually recorded by the staff liaison, and sometimes a designated secretary. The minutes serve as a permanent record of the group's actions, testimony and opinions and they are forwarded to the City Council as input and background for Council decisions.

All local bodies must take and keep minutes of its meetings. Minutes should contain at least the following information:

- The time the meeting was called to order
- The names of the members attending the meeting
- A brief summary of the action taken on each item and the vote. (Note the names of each member who voted "Aye", "No," or "Abstained" if the vote is not unanimous, as well as absent/recused members)
- The names of those people who spoke on each item
- The time the meeting was adjourned

There are three types of minutes –

Action Minutes: Reflect the motion, the maker and second;

Summary Minutes: Reflects the above action plus a brief summary of the discussion;

and **Detailed Minutes:** Reflects actions plus a record of the entire discussion.

The City of Davis requires that all commissions prepare “summary minutes,” however there are times when “action minutes” are appropriate. Summary minutes are exactly what they sound like: concise summaries of the thought process that lead to decisions/motions made by the commission. Minutes should only capture significant points made by the commission, and not every word. Individual comments that are not relevant to the item, are not already reflected in that commission members’ vote on the item, or not pursued by the commission as a whole should not be included in the minutes.

Approval Process

The staff liaison will agendize the draft minutes for the commission to review and approve. It is important for members of city commissions to review minutes and make corrections if needed so that the approved minutes accurately reflect the work of the group. Once approved, the staff liaison will forward the finalized minutes to the City Council as an informational item.

Correction of Minutes

Corrections to minutes should be made at the meeting when the minutes are brought forward for adoption. Corrections require a motion to amend, second and a majority vote, and, if approved, are noted in the minutes of the current meeting. Unless specifically requested by the commission, it is not necessary for staff to return to the commission with minor corrections made to minutes.

The staff liaison may make the corrections per the commission's direction, and then forward the finalized minutes to the Council.

Recording Meetings

Televised Meetings

As part of their franchise agreement with the City of Davis, Comcast and AT&T provide the city with channels on the local cable television systems as a means for providing municipal information to the citizens of Davis. By direction of the City Council, meetings of the City Council and the Planning Commission are televised on a regular basis. In addition, other commission meetings are televised on a special request basis.

Requesting a Meeting be Televised

Commissions that are not televised on a regular basis may request a meeting be televised. The commission should be certain that the meeting would attract a wide interest in the community before requesting that it be televised. The Chair of the commission should direct the staff liaison to make a request to televise the meeting. The request must be made to the media services program a minimum of two weeks in advance. All televised meetings take place in the Community Chambers.

COMMISSION RECORDS

Public Records

All documents generated in the administration of a board are considered official records of the City of Davis. All agendas, minutes, reports, communications, audio recordings, and any other related material, should be kept in an organized manner and retained in accordance with the Davis Records Retention Schedule. Any materials distributed to the commission before, during, or after any meeting are public records and must be made available to the public upon request. Commission minutes must be retained permanently.

General Correspondence

Any/all correspondence distributed to the commission should be forwarded to the staff liaison and retained in accordance with the City of Davis' Records Retention Schedule. Public correspondence received by the commission are public records and must be made available upon request.

[COMMISSION NAME] WORK PLAN

<u>Goals (Relevant Council Goals, Objectives and/or Tasks)</u>	<u>Plan for Discussion/Anticipated Actions</u>	<u>Timeline/Status</u>
<p>This box should be used to identify goals of the commission for the next 1 to 2 years. The goal should be clearly identified as a City Council Goal or Commission-specific goal.</p>	<p>This box should contain a brief description of the commission's plan for future discussion topics and/or actions to achieve the identified goal.</p>	<p>This box can be used as a checklist for the commission's progress in achieving its objective, or as a long range calendar.</p> <p>Some goals/objectives may be ongoing or occur as items arise; these should be identified in the work plan, but may not have a specific timeline associated.</p> <p>Commissions may wish to keep a record of accomplished goals for each 2-year cycle, in which case this box should identify the status as completed.</p>

2017 - THE BROWN ACT

As amended by Chapter 175 Statutes of 2016 (SB 1436), Chapter 265 Statutes of 2016 (AB 2257) and Chapter 507 Statutes of 2016 (AB 1787)
(New language underlined; repealed language ~~lined-out~~)

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THE RALPH M. BROWN ACT
(Government Code Sections 54950 - 54963)

§54950. **Declaration, Intent; Sovereignty**

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.

§ 54950.5. **Title of Act**

This chapter shall be known as the Ralph M. Brown Act.

§ 54951. **Local Agency, Definition**

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

§ 54952. **Legislative Body, Definition**

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than

a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

§ 54952.1. Newly Elected Members

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

§ 54952.2. Meeting, Definition

(a) As used in this chapter, “meeting” means 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 action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, 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.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter 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.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative 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 legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative 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 that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

§ 54952.3. Meetings: Simultaneous

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

§ 54952.6. Action Taken, Definition

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

§ 54952.7. Copies of Chapter to Members of Legislative Body of Local Agencies

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected

legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

§ 54953. Meetings to be Open and Public; Attendance

(a) 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.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means 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. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within

or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2018.

§ 54953.1. Testimony of Members Before Grand Jury

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

§ 54953.2. Protections and Prohibitions Under the Americans with Disabilities Act of 1990

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

§ 54953.3. Conditions to Attendance

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to

provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 54953.5. Right to Record Proceedings; Retention of Recordings

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

§ 54953.6. Right to Broadcast Proceedings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

§ 54953.7. Access to Meetings Beyond Minimal Standards

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

§ 54954. Rules for Conduct of Business; Time and Place for Holding Regular Meetings

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the

jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California 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.

(6) Meet outside their immediate jurisdiction if the meeting takes place 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.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on non-adversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

§ 54954.1. Mailed Notice of Meetings, On Request Therefor: Charge

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

§ 54954.2. Agenda; Posting; Action or Discussion on Other Matters

(a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing 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. A brief general description

of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school

district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

~~(2)~~(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take

immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

**§ 54954.3. Opportunity for Public to Address Legislative Body:
Regulations**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of

members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) (1) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

§ 54954.4. Reimbursement for Costs

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs

which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

§ 54954.5. Closed Session Item Descriptions

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers) or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)

OR

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board:
(Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

§ 54954.6. Public Hearing Required Prior to Adoption of New Or Increased Taxes Or Assessments

(a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term “new or increased assessment” does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. If the assessment is

proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing

with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decision-making process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

§ 54955. Adjournment of Meetings

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he

shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

§ 54955.1. **Continuance of Meeting to Subsequent Meeting**

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or re-continued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 54956. **Special Meetings; Call; Notice**

(a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and

the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

§ 54956.5. Emergency Meetings in Emergency Situations

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

§ 54956.6. Fees

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

§ 54956.7. Closed Sessions, License Applications; Rehabilitated Criminals

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be

disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

§ 54956.75. Audit by the State Auditor’s Office; Closed Meeting to Discuss Response

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

§ 54956.8. Real Property Transactions; Closed Meeting With Negotiator

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, “lease” includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

§ 54956.81. Closed Sessions; Specific Pension Fund Investments

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

§ 54956.86. Closed Sessions, Legislative Body of Private Corporations; Federally Protected Information

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

§ 54956.87. Records of Certain Health Plans; Meetings on Health Plan Trade Secrets

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any

other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the

Department of Managed Health Care in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, “health plan trade secret” means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

§ 54956.9. Pending Litigation; Closed Session; Abrogation of Privilege

(a) Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

(b) For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

(c) For purposes of this section, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(1) Litigation, to which the local agency is a party, has been initiated formally.

(2) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).

(4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

(e) For purposes of paragraphs (2) and (3) of subdivision (d), “existing facts and circumstances” shall consist only of one of the following:

(1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving

knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(f) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

§ 54956.95. Closed Sessions; Joint Powers Insurance Authorities

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the

joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

§ 54956.96. Closed Session; Joint Powers Agencies

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency

member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

§ 54957. Closed Sessions; Discussion of Employee/Independent Contractor; Exclusion of Witnesses

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting 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 by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for

holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term “employee” shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

§ 54957.1. Closed Sessions; Public Report of Decisions

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action

referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

§ 54957.2. Minute Book Record of Closed Sessions; Inspection

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

§ 54957.5. Agendas and Other Writings Distributed for Discussion or Consideration at Public Meetings; Public Records; Inspection; Closed Sessions

(a) Notwithstanding Section 6255 or any other law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

(b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required

by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This chapter shall not be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that a surcharge shall not be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

§ 54957.6. Closed Sessions; Salaries, Legislative Body of Local Agencies; Salaries, Salary Schedules or Fringe Benefits; Mandatory Subjects

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

§ 54957.7. Closed Sessions; Statement of Reasons and Legal Authority; Scope of Coverage; Notice

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed

session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

§ 54957.8. Closed Sessions; Legislative Body Of Multijurisdictional Law Enforcement Agency

(a) For purposes of this section, “multijurisdictional law enforcement agency” means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

§ 54957.9. Authorization to Clear Room Where Meeting Willfully Interrupted, Etc.

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative

body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

§ 54957.10. **Closed Sessions; Employee Application for Early Withdrawal of Funds in Deferred Compensation Plan; Financial Hardship**

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

54958. **Application of Chapter**

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

§ 54959. **Criminal Penalty**

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

§ 54960. **Actions to Stop or Prevent Violations or Determine Applicability of Chapter**

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section

54960.2, or to 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 or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

§ 54960.1. Unlawful Action by Legislative Body; Action for Mandamus or Injunction; Prerequisites

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c) (1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error,

irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

§ 54960.2. Requirements for Filing of Actions; Cease and Desist

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To:

The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it

will cease, desist from, and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

[Chairperson or acting chairperson of the legislative body]

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

§ 54960.5. Costs and Attorney Fees

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a

commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 54961. **Meetings Places; Discriminatory Admission Policies; Accessibility**

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

§ 54962. **Closed Session by Legislative Body Prohibited**

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

§ 54963. Closed Sessions: Confidential Information

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, “confidential information” means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.



(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

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A GUIDE TO THE RALPH M. BROWN ACT

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Chapter 1

IT IS THE PEOPLE’S BUSINESS

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Chapter 1

IT IS THE PEOPLE'S BUSINESS



The right of access

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

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

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

*over the instruments they have created."*¹

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

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

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

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

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

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

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.

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

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

Narrow exemptions

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

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

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

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

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

Public participation in meetings

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

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

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

Controversy

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

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

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

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; and
- The right of the press to fully understand and communicate public agency decision-making.



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

Achieving balance

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

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

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

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

Historical note

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

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

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

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

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

ENDNOTES:

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

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Chapter 2

LEGISLATIVE BODIES

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

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Chapter 2

LEGISLATIVE BODIES

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



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

A “legislative body” includes:

- **The “governing body”** of a local agency² 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.

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

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.

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.⁸

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.⁹ Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee “shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.¹⁰ “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.¹¹
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.¹² These include some nonprofit corporations created by local agencies.¹³ If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.¹⁴ When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.¹⁵

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

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

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

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

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

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.¹⁶

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

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

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

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

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

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

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.²⁰
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.²¹
- County central committees of political parties are also not Brown Act bodies.²²

ENDNOTES:

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127

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

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Chapter 3

MEETINGS

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Chapter 3

MEETINGS



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

Brown Act meetings

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

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 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 his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

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

Conferences

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

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

Community Meetings

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



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

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

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



Other Legislative Bodies

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

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside

from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

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

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

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

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

Standing Committees

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

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

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

Social or Ceremonial Events

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

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

Grand Jury Testimony

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

Collective briefings

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

Retreats or workshops of legislative bodies

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



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

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

Serial meetings

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

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



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

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

the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”¹⁴

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.¹⁵

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

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

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

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

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

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating

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

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

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

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

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

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

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

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

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

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

Informal gatherings

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

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

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

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



Technological conferencing

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

“Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either

audio or video, or both.”²¹ In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:²²

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

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

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

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

Location of meetings

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

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

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

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

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

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

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential

employee from another district.²⁶ A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

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

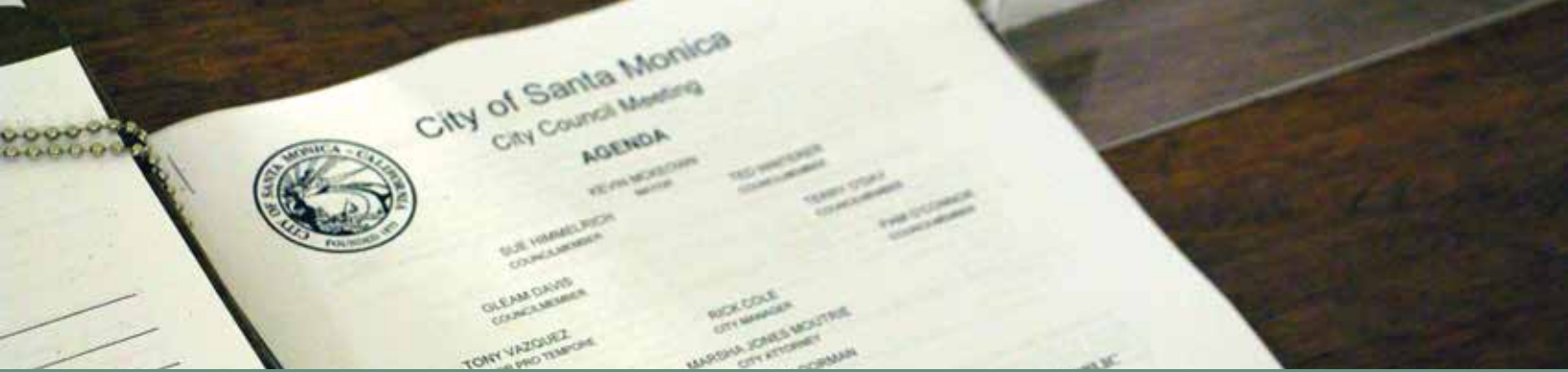
Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of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



Endnotes:

- 1 California Government Code section 54952.2(a)
- 2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 3 California Government Code section 54954(a)
- 4 California Government Code section 54956
- 5 California Government Code section 54956.5
- 6 California Government Code section 54955
- 7 California Government Code section 54952.2(c)
- 8 California Government Code section 54952.2(c)(4)
- 9 California Government Code section 54952.2(c)(6)
- 10 California Government Code section 54953.1
- 11 “*The Brown Act*,” California Attorney General (2003), p. 10
- 12 California Government Code section 54952.2(b)(1)
- 13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 14 California Government Code section 54952.2(b)(2)
- 15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 17 California Government Code section 54957.5(a)
- 18 California Government Code section 54952.2(b)(2)
- 19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 20 California Government Code section 54953(b)(1)
- 21 California Government Code section 54953(b)(4)
- 22 California Government Code section 54953
- 23 California Government Code section 54954(b)
- 24 California Government Code section 54954(b)(1)-(7)
- 25 94 Ops.Cal.Atty.Gen. 15 (2011)
- 26 California Government Code section 54954(c)
- 27 California Government Code section 54954(d)
- 28 California Government Code section 54954(e)

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



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

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

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

awareness, among other factors.⁸ The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

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

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

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

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

Are these descriptions adequate?

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

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

Is this permissible?

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

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

Mailed agenda upon written request

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

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



Notice requirements for special meetings

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

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

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

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

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.¹³ If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.¹⁴ A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

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

Notice requirements for emergency meetings

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



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

Notice of compensation for simultaneous or serial meetings

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

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

Educational agency meetings

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

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.²¹ Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article 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.²² 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:²³

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

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

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

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

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

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

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

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

Responding to the public

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

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

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body’s rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.²⁴ However, caution should be used to avoid any discussion or action on such items.

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

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

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

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

The right to attend and observe meetings

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

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

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

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.²⁸



Action by secret ballot, whether preliminary or final, is flatly prohibited.²⁹

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

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

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

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

Records and recordings

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

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

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

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

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



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

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

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

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.⁴⁰

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

The public's place on the agenda

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

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

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

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



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

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

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

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

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



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

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

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

Endnotes:

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327 (1995)
- 3 88 Ops.Cal.Atty.Gen. 218 (2005)
- 4 California Government Code sections 54954.2(a)(1) and 54954.2(d)
- 5 California Government Code section 54960.1(d)(1)
- 6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262
- 7 *North Pacific LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432
- 8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8
- 9 California Government Code section 54954.2(a)(1)
- 10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

- 11 California Government Code section 54954.1
- 12 California Government Code sections 54956(a) and (c)
- 13 California Government Code section 54955
- 14 California Government Code section 54954.2(b)(3)
- 15 California Government Code section 54955.1
- 16 California Government Code section 54956.5
- 17 California Government Code section 54952.3
- 18 Education Code sections 35144, 35145 and 72129
- 19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 20 California Education Code section 35145.5
- 21 California Government Code section 54954.6
- 22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 23 California Government Code section 54954.2(b)
- 24 California Government Code section 54954.2(a)(2)
- 25 California Government Code section 54953.3
- 26 California Government Code section 54961(a); California Government Code section 11135(a)
- 27 California Government Code section 54952.2(c)(2)
- 28 California Government Code section 54953(b)
- 29 California Government Code section 54953(c)
- 30 California Government Code section 54953(c)(2)
- 31 California Government Code section 54957.9.
- 32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption).
- 33 California Government Code section 54957.9
- 34 California Government Code section 54957.5
- 35 California Government Code section 54957.5(d)
- 36 California Government Code section 54957.5(b)
- 37 California Government Code section 54957.5(c)
- 38 California Government Code section 54953.5(b)
- 39 California Government Code section 54957.5(d)
- 40 California Government Code section 54953.5(a)
- 41 California Government Code section 54953.6
- 42 California Government Code section 54954.3(a)
- 43 California Government Code section 54954.3(c)
- 44 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 45 California Government Code section 54954.3(a)
- 46 California Government Code section 54954.3(a)

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

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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. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.³

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

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

Agendas and reports

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

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a “safe harbor” from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.⁷

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

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

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

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

Litigation

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

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

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.*

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

agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.¹⁹

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.²⁰ The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and

circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

Anticipated initiation of litigation by the local agency

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

Certain actions must be reported in open session at the same meeting following the closed



session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.²¹ Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

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



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

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

The agency’s negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern²⁴ and the names of the parties with whom its negotiator may negotiate.²⁵

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.²⁶

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

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

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

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

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

Public employment

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

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

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

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

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

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.³⁷ Action on individuals who are not “employees” must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

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

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

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

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

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

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

Labor negotiations

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

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

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

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

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

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

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

Labor negotiations — school and community college districts

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

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

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.⁴⁴

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

Other Education Code exceptions

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

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

Joint Powers Authorities

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

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

License applicants with criminal records

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

Public security

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



Multijurisdictional law enforcement agency

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

The exception applies to the legislative body of the joint powers agency and to 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.⁵⁴

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.⁵⁵

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

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

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

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Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,⁵⁷ consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,⁵⁸ hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,⁵⁹ discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations

concerning rates of payment,⁶⁰ and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.⁶¹

PRACTICE TIP: Meetings are either open or closed. There is nothing “in between.”⁶²

Who may attend closed sessions

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

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

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

The confidentiality of closed session discussions

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

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information received during a closed session regarding pending litigation,⁶⁷ though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.⁶⁸ In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.⁶⁹

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

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

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

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

The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.⁷¹ The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.

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

ENDNOTES:

- 1 California Government Code section 54962
- 2 California Constitution, Art. 1, section 3
- 3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).
- 4 California Government Code section 54957.1
- 5 California Government Code section 54954.5
- 6 California Government Code section 54954.2
- 7 California Government Code section 54954.5
- 8 California Government Code sections 54956.9 and 54957.7
- 9 California Government Code section 54957.1(a)
- 10 California Government Code section 54957.1(b)
- 11 California Government Code section 54957.2
- 12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707
- 13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 15 82 Ops.Cal.Atty.Gen. 29 (1999)
- 16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471
- 17 “The Brown Act,” California Attorney General (2003), p. 40
- 18 California Government Code section 54956.9(g)
- 19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 20 Government Code section 54956.9(e)
- 21 California Government Code section 54957.1
- 22 California Government Code section 54956.8
- 23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).
- 24 73 Ops.Cal.Atty.Gen. 1 (1990)
- 25 California Government Code sections 54956.8 and 54954.5(b)
- 26 California Government Code section 54957.1(a)(1)
- 27 California Government Code section 54957(b)
- 28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).
- 29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

- 31 California Government Code section 54957(b)(3)
- 32 88 Ops.Cal.Atty.Gen. 16 (2005)
- 33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860
- 34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).
- 35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87
- 36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 37 California Government Code section 54957
- 38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 39 California Government Code section 54957.1(a)(5)
- 40 California Government Code section 54957.6
- 41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not “employees” of the district).
- 42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)
- 43 California Government Code section 54957.1(a)(6)
- 44 California Government Code section 3549.1
- 45 California Government Code section 3540
- 46 California Government Code section 3547
- 47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).
- 48 California Education Code section 72122
- 49 California Education Code section 60617
- 50 California Government Code section 54956.96
- 51 California Government Code section 54956.7
- 52 California Government Code section 54957
- 53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354
- 54 California Government Code section 54957.8
- 55 California Government Code section 54962
- 56 California Health and Safety Code section 32106
- 57 California Government Code section 54956.75
- 58 California Government Code section 54956.81
- 59 California Government Code section 54956.86
- 60 California Government Code section 54956.87
- 61 California Government Code section 54956.95
- 62 46 Ops.Cal.Atty.Gen. 34 (1965)
- 63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

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

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

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

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

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

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Chapter 6

REMEDIES



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

Invalidation

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

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

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

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

Applicability to Past Actions

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

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

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

Civil action to prevent future violations

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

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

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



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

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

Costs and attorney's fees

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

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

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

Criminal complaints

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

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

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

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

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.²⁴

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

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.²⁵ There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.²⁶

Voluntary resolution

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

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

ENDNOTES:

- 1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54956.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.
- 2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198
- 3 California Government Code section 54960.1 (b) and (c)(1)
- 4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319
- 5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561
- 6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118
- 7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)
- 8 Government Code Sections 54960.2(a)(1), (2)
- 9 Government Code Section 54960.2(b)



- 10 Government Code Section 54960.2(a)(4)
- 11 Government Code Section 54960.2(c)(2)
- 12 Government Code Section 54960.2(c)(1)
- 13 Government Code Section 54960.2(c)(3)
- 14 Government Code Section 54960.2(d)
- 15 Government Code Section 54960.2(e)
- 16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6
- 17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36
- 18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein
- 19 California Government Code section 54960.5
- 20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 21 California Government Code section 54959
- 22 California Government Code section 54952.6
- 23 61 Ops.Cal.Atty.Gen.283 (1978)
- 24 California Government Code section 54959
- 25 California Government Code section 1222 provides that “[e]very 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.”
- 26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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City of Davis
Social Services Commission Agenda
Community Chambers, 23 Russell Boulevard, Davis, CA 95616
Monday, November 21, 2016
7:00 P.M.

Commission Members: Claire Goldstene, Donald Kalman, Ann Privateer, Mindy Romero (Vice Chair), Tracy Tomasky, Bernita Toney, R. Matthew Wise (Chair)
Georgina Valencia (Alternate)

Council Liaison: Robb Davis, Lucas Frerichs (Alternate)

Staff: Kelly Stachowicz, Assistant City Manager
Adrienne Heinig, Administrative Aide

Please note: The numerical order of items on this agenda is for convenience of reference; items may be taken out of order. No new items shall begin after 9:00 p.m. unless unanimous consent exists to continue.

1. Call to Order & Roll Call

2. Approval of Agenda

3. Brief Announcements from Staff, Commissioners, and Liaisons

4. Public Comment

At this time any member of the public may address the commission on matters which are not listed on this agenda, or are listed on the consent calendar. Comments are usually limited to no more than 3 minutes per speaker. Speakers will be asked to state their name for the record.

5. Consent Calendar

All matters listed under the Consent Calendar are considered routine and non-controversial, require no discussion, as items are expected to have unanimous support, and may be enacted by one motion.

A. Approval of Minutes – September 19, 2016

B. Approval of Minutes – October 17, 2016

6. Regular Items

A. Finalize Recommendations for Critical Needs List for CDBG and HOME Program Year 2017-2018. Staff will present the final draft list of critical needs, so that the Commission may make any necessary changes, and take action on them.

7. Commission and Staff Communications

(Includes upcoming meeting items, events, subcommittee reports, reports on meetings attended, inter-jurisdictional bodies, inter-commission liaisons, etc.)

A. Social Services Commission Workplan. Review the current workplan, discuss additional focus areas/items, and incorporate any changes/updates.

8. Adjourn

In compliance with Brown Act regulations, this agenda was legally posted at least 72 hours in advance of the listed meeting date. Any writing related to an agenda item for this meeting distributed to the Commission less than 72 hours before this meeting is available online at <http://cityofdavis.org/city-hall/city-council/commissions-and-committees/>. These writings will also be available for review at the Commission meeting. For additional information regarding this agenda or this commission, please feel free to contact the City Manager's Office at 530-757-5602.

The City does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation.

As required by the Americans with Disabilities Act, individuals needing special assistance to access the facility or to otherwise participate at this meeting, including auxiliary aids or services, should contact the City Manager's Office at 530-757-5602. Notification at least 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.



City of Davis

Planning Commission Special Meeting Agenda

“Hyatt House Hotel” Site Visit

Greenbelt location on southside of 2750 Cowell Boulevard, Davis, CA 95618

Wednesday, September 7, 2016

8:00 A.M.

Commission Members: Herman Boschken, Cheryl Essex, George Hague, Marilee Hanson (Vice Chair), Rob Hofmann (Chair), Cristina Ramirez, Stephen Streeter, Stephen Mikesell (Alternate)

Council Liaisons: Lucas Frerichs, Rochelle Swanson (Alternate)

Staff: Community Development/Sustainability Assistant Director Ash Feeney;
Community Development Administrator Katherine Hess

Please note: The numerical order of items on this agenda is for convenience of reference; items may be taken out of order. No new items shall begin after 9:00 a.m. unless unanimous consent exists to continue.

9. Call to Order & Roll Call

10. Approval of Agenda

11. Public Comment

At this time, any member of the public may address the commission only on matters which are listed on this agenda. Comments are usually limited to no more than 3 minutes per speaker. Speakers will be asked to state their name for the record.

12. Regular Items

A. Site visit of proposed “Hyatt House Hotel” location, 2750 Cowell Boulevard

The Planning Commission is visiting the site to evaluate the proposed extended-stay hotel development in the context of surrounding land uses. The applicant has arranged for a professional drone company to allow assessment of views from upper floors of the building and will arrange for balloons to demark the location of proposed structure. Formal action will not be taken until the Planning Commission regular meeting of September 14, 2016.

Transportation to the site will not be provided. Anyone attending should meet on the on the greenbelt on the southside of the 2750 Cowell Boulevard project site at 8:00 A.M..

13. Adjournment

The next Planning Commission meeting will be held Wednesday, September 14, 2016, at 7:00 P.M.

In compliance with Brown Act regulations, this agenda was legally posted at least 24 hours in advance of the listed meeting date. For additional information regarding this agenda or this commission, please feel free to contact the City Clerk's Office at (530) 757-5648, or via e-mail at clerkweb@cityofdavis.org

The City does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation.

As required by the Americans with Disabilities Act, individuals needing special assistance to access the facility or to otherwise participate at this meeting, including auxiliary aids or services, should contact the City Manager's Office at 530-757-5602. Notification at least 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

SAMPLE



Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



MISSION AND CORE BELIEFS

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

VISION

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

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ABOUT THE AUTHOR

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



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INTRODUCTION

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

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

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

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

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

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

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

The Role of the Chair

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

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

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

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

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

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

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

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

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

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

This is done in one of three ways:

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

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

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

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

Motions in General

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

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

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

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

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

The Three Basic Motions

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

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

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

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

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

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

Multiple Motions Before the Body

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

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

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

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

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

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

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

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

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

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

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

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

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

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

Majority and Super Majority Votes

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

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

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

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

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

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

Counting Votes

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


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

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

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

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

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



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

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

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

How does this work in practice?

Here are a few examples.

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

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

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

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

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

The Motion to Reconsider

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

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

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

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

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



Courtesy and Decorum

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

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

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

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

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

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

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

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

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

Special Notes About Public Input

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

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

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

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



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Reference Guide to Motions

<u>Type of Motion</u>	<u>Second Required</u>	<u>Debatable</u>	<u>Amendable</u>	<u>Priority Over Pending Motion</u>	<u>Reconsidered</u>	<u>Interrupt Speaker</u>
Adjourn (<i>sine die</i>)	Y	n/a	n/a	Y	n/a	n/a
Amend or Substitute ¹	Y	Y	Y	Y	Y	n/a
Appeal	Y	Y	n/a	n/a	Y	Y
Call the Question ⁷	Y	n/a	n/a	Y	n/a	n/a
Take up New Business Past 11:30 p.m. ⁸	Y	Y	n/a	Y	n/a	n/a
Limit Debate	Y	n/a	Y	Y Except "table"	Y	n/a
Main Motion	Y	Y	Y	n/a	Y	n/a
Nominations	n/a	Y	n/a	n/a	n/a	n/a
Personal Privilege or Point of Order	n/a	n/a	n/a	Y	Y	Y
Postpone to Time Certain	Y	Y	Y	Y	Y	n/a
Previous Question	Y	n/a	n/a	Y	Y	n/a
Recess or Adjourn to Time Certain	Y	Y	Y	n/a	n/a	n/a
Reconsider	Y ²	Y ³	n/a	n/a	n/a	4
Table or Take From Table	Y	n/a	n/a	Y ⁵	n/a	n/a
Take Up Out of Order	Y	n/a	n/a	n/a	n/a	n/a
Withdraw a Motion ⁶	n/a	n/a	n/a	Y	Y	Y

"Y" indicates that this action can be taken, is necessary, is required, is permitted or is applicable

"n/a" indicates that this action cannot be taken, is unnecessary or is inapplicable

¹ Limit of three substitute motions.

² May only be made by a person who voted on prevailing side; not applicable to "table" motions. Must be made within two meetings of original action

³ If prior motion was debatable.

⁴ Except for request for later action.

⁵ Highest subsidiary motion -- takes precedence over all motions except adjourn and privilege.

⁶ Must be voted unless there is no objection.

⁷ Requires 4/5 vote.

⁸ Requires 4/5 vote.

ATTACHMENT 6 – UTILITIES COMMISSION RECOMMENDATION

At their meeting on September 16, 2020, the Utilities Commission made the following motion for the item on the Improving City of Davis Decision Making: An Open Letter/ A Proposal for Improving City of Davis Decision Making (Item 6A).

The Utilities Commission would like to commend the efforts of local Davis residents in bringing forth the proposal and recommendations. We emphasize the importance of the engagement of the City Manager in the City's response to the proposal, understanding that the implementation of the recommendations within the proposal will take time, and the consistent, day-to-day leadership of the City Manager is essential. With consideration of this context, the Commission passed the following motion:

The Utilities Commission recommends that the city council support the concepts of transparency and better decision making put forth in the proposal and take actions to implement improvements based in part or whole on the proposal. The Commission authorizes staff to work with Commissioners Braun and Troost to paraphrase Commissioner Braun's comments to the motion and include those comments in conveyancing the motion to City Council.

Motioned by L Kristov, seconded by M Williams – passed by all present (O Bystrom and J Franco were absent)

Follow-up to Sept. 21 meeting to discuss proposal for improving City of Davis decision making

From: Lorenzo Kristov, Richard McCann and Scott Ragsdale

Following 9/21 meeting with Mike Webb and Kelly Stachowicz

Note to City Council members copied on this letter: We are sending this to you at the same time as we're sending it to Mike Webb and Kelly Stachowicz, so they've not had a chance to review and comment on it in advance. For completeness and open communication, we're also including, clearly labeled and summarized on the last page, our post-meeting requests for City Council guidance which we formulated after the meeting. We've tried to be diligent in reporting accurately on our meeting and we apologize for any inadvertent gaps or inaccuracies.

Dear Mike and Kelly,

Thank you for meeting with us on Monday 9/21 to discuss our proposal for improving city of Davis decision making. We felt it was a productive discussion and we look forward to continuing to collaborate with you to help support implementation. It was gratifying to hear from you and from Council members that much of the proposal is well received, positive and should be implemented in the shortest reasonable time. What follows are our notes from the meeting and our post-meeting requests of Council for direction.

In our meeting we identified many elements where we agree on needed improvements, and we said we want to build as much as possible on existing procedures that are working well. For the more complicated elements and where different concerns or objectives need to be balanced we shared some ideas for a path forward, some of which will require further guidance from the City Council.

In this email we're providing our notes from the meeting, to capture the main points of the discussion and next steps, as well as our thoughts on the direction we would like to see from City Council at the October 6 meeting (see our post-meeting requests of Council noted below). You clarified for us that you expect the October 6 discussion to involve a staff presentation and request for Council guidance, but you do not plan to request a formal Council decision at that time.

We structured our meeting based on a walk-through of the July 23 proposal. Starting with section A on transparency, information disclosure and public engagement, we emphasized the importance of complying with the spirit of the Brown Act to maximize effective transparency and public engagement, which may not be achieved through minimal compliance with the letter of the Act. We noted that the process leading to the Council's March 24 BrightNight decision was a key stimulus for our thinking, and therefore the motivation behind section A was to avoid situations where public information on an important Council decision becomes available only at the last possible moment before the decision. We did not discuss Section A further in our meeting.

Our post-meeting request of Council: We ask the City Council to clearly state its intent that the City follow the spirit of the Brown Act to facilitate public participation in local

government decision making, and that complying narrowly with the letter of the Act while developing proposals without public visibility is not acceptable City procedure.

On section B regarding functioning of the commissions, we felt we had general agreement on points 1 and 2 to improve the onboarding of new commissioners and to standardize practices across the commissions. We understood both of you to explain that you had already recognized the need to better orient new commissioners to city government processes and have been thinking about improving consistency of commissioner onboarding and other commission procedures. On point 3 we explained that we wanted to ensure the discretion of commissions to agendaize topics they felt were within their scope even if such topics were not explicitly brought to them by staff for input or action. We did not discuss this point further in our meeting.

On point 4 we had general agreement that such a full-day annual public workshop is a good idea, both to better inform the public about the commissions and their value as a venue for people to raise or opine on issues important to them, and as a vehicle for the commissions to identify areas of overlapping scope and develop some action steps for collaboration. We agreed this item would take some further work to define logistics and other details.

Our post-meeting request of Council: We ask the City Council to affirm its support for section B items 1-4 and direct staff to continue collaborating with the authors of the proposal to develop details for implementation.

On point 5 you pointed out that a multi-commission task group is a complicated matter both in procedural and logistical terms and needs some careful thought. We noted that meetings of such a task group would likely need to be publicly noticed, a departure from the statement in the proposal that they should be able to meet privately to work on their assigned tasks. You noted the task force recently formed by Council consisting of the Social Services, Human Resources and Police Accountability Commissions, as well as a newly forming task force to address the housing element of the City's plan. You mentioned that SB 330 sets limits on the amount of public meetings on any given housing initiative, and that you would have to manage the public process to observe those constraints. We noted that a multi-commission task group is only one possible vehicle for commission collaboration, and that we also want to explore other simpler approaches. We did not reach specific conclusions on this item, but noted that the two new task forces mentioned would provide learning we could draw upon in exploring this idea.

Our post-meeting request of Council: We ask the City Council to acknowledge the potential value of multi-commission task groups and direct staff to draft guidelines, with input from the commissions, for the formation and operation of such task groups, including considerations for topics where SB 330 applies.

On section C regarding staff development of proposals for City Council and Council action on such proposals, we started with a quick review of the bulleted items under "applicability." We made the point that "climate mitigation, adaptation and resilience measures" were first on the list because we believe that the dangers facing Davis and all of California due to climate disruption are likely to grow more severe in the coming years, and that we need to bring all the city's talent, expertise and willingness to get involved into collaborative structures and venues so we can develop the best possible solutions to the issues we face. Indeed, this has been at the top of our list as a driver for our proposal. We did not discuss this section further.

Our post-meeting request of Council: We ask City Council to acknowledge the growing volatility of climate disruptions and the need to find more effective ways to engage local expertise in developing optimal solutions to the challenges we face as a city.

On the "consultation plan" section, we observed that city staff probably already do some of these steps internally, but that it would be good to have visibility to the staff's plan for consulting

with commissions and affected groups when it takes on a significant initiative, whether that initiative came from a Council directive, or a problem staff identified, or was raised by the public, or some other source. We did not further discuss the details or logistics related to this section.

Our post-meeting request of Council: We ask City Council to endorse the concept of a staff consultation plan for significant initiatives, and direct staff to develop a format for such a plan and guidelines for sharing the plan for input from relevant commissions.

On the “final staff report” section, you pointed out that you had already identified the need to add an explicit section on commission consultation and input to the standard form for staff reports to Council and had initiated internal effort on this. We all agreed that it’s important to convey commission recommendations verbatim with sufficient information to explain the rationale for their recommendations. And we understood that you would be working to implement this element in the staff report standard format.

Our post-meeting request of Council: We ask the City Council to confirm their intent for staff to incorporate an explicit section at the beginning of staff reports that accurately conveys commission input and formal recommendations as well as other public outreach efforts conducted and their results. In cases where a staff recommendation incorporates commission input, whether by formal motion or informal discussion, the staff report should acknowledge the commission’s contribution.

Regarding staff providing opinions of development applications (last paragraph on p 6 of the proposal), we noted that several people we’ve spoken with had read this as a blanket prohibition on staff opinions, and we clarified that this was not our intent. Our intent was to distinguish between staff provision of objective analysis and assessment of applications or specific features of a proposal, which we believe is valuable and do not wish to limit, versus staff advocacy on behalf a developer on matters that should be the developer’s responsibility to advocate for, which is what we believe staff should not do. For example, if a commission recommends a certain baseline feature of a development project, as the NRC recently did on the DISC project, we believe it should not be staff’s function to argue that such feature is not financially viable, particularly since neither staff nor any of the public have access to the developer’s confidential financial analysis of the project. We believe that if a developer wants to claim that a feature formally recommended by a commission is not viable, the developer should make that case without city staff interpreting the applicant’s data and/or analysis.

You pointed out that in some instances it is valuable for the staff to perform an independent financial analysis of the proposal. For example, when a developer provides its own argument against incorporating a specific feature and members of the public do not believe the developer is credible, an independent objective analysis by staff can be valuable. We recognized this value, and clarified that in such cases the staff position should be complete and transparent regarding the information and analysis that led to the staff conclusion. We also noted that it would be beneficial for staff to ask further clarification from the commission that made the recommendation to be sure we’re all talking about the same thing. We gave the example of NRC’s recommendation that DISC include “microgrid-ready” features, which are relatively low-cost infrastructure provisions to enable microgrid development at a later date. But in this case staff did not focus on “microgrid-ready” but determined that incorporating a “microgrid,” which is much more costly than “microgrid-ready” and not what MRC asked for, would not be financially viable.

Our post-meeting request of Council: We ask the City Council to direct staff, when making recommendations on a development proposal to (1) include in the staff report a complete explanation of their analysis and rationale for arriving at their recommendation, and (2) provide a draft for review of that staff report section to the chairperson(s) of any

commission(s) that have provided recommendations before finalizing the staff report, to identify and correct any possible misunderstandings.

On the “City Council deliberation and action” section, we explained the importance to us of having a commission representative able to participate in the public Council discussion of a topic and respond to Councilmember questions, particularly when the commission has already provided a formal recommendation to Council. This is important both to ensure that Council has the full information and insight that the commission wants to provide and to enable the public to hear the commission’s position and the Council’s response. You expressed the concern that some commissioners may feel that the process is broken if the Council decision does not adopt a commission’s recommendation. We clarified that we do not have that view, that we do not expect Council to adopt a commission’s recommendations in all instances, and a decision not to adopt a commission’s recommendation does not indicate a broken process. What we are seeking is to have complete discussion of the different perspectives and a reasoned explanation of the Council’s decision, with a commission member allowed to participate in the Council’s public discussion to explain the commission’s recommendation and answer questions. We mentioned the recent experience of an NRC representative engaging in the Council discussion of the leaf blower item, and all agreed that that was the kind of thing we’re advocating and that it was beneficial.

Our post-meeting request of Council: We ask the City Council to affirm, as a matter of policy to be included in the city’s commission handbook, that when a commission has provided a recommendation to the Council on a decision matter before it, a member of that commission shall be invited to participate in the Council’s public discussion of that matter.

Summary of post-meeting requests of Council from Kristov, McCann and Ragsdale

1. We ask the City Council to clearly state its intent that the City follow the spirit of the Brown Act to facilitate public participation in local government decision making, and that complying narrowly with the letter of the Act while developing proposals without public visibility is not acceptable City procedure.
2. We ask the City Council to affirm its support for section B items 1-4 and direct staff to continue collaborating with the authors of the proposal to develop details for implementation.
3. We ask the City Council to acknowledge the potential value of multi-commission task groups and direct staff to draft guidelines, with input from the commissions, for the formation and operation of such task groups, including considerations for topics where SB 330 applies.
4. We ask City Council to acknowledge the growing volatility of climate disruptions and the need to find more effective ways to engage local expertise in developing optimal solutions to the challenges we face as a city.
5. We ask City Council to endorse the concept of a staff consultation plan for significant initiatives, and to direct staff to develop a format for such a plan and guidelines for sharing the plan for input from relevant commissions.
6. We ask the City Council to confirm their intent for staff to incorporate an explicit section at the beginning of staff reports that accurately conveys commission input and formal recommendations as well as other public outreach efforts conducted and their results. In cases where a staff recommendation incorporates commission input, whether by formal motion or informal discussion, the staff report should acknowledge the commission's contribution.
7. We ask the City Council to direct staff, when making recommendations on a development proposal to (1) include in the staff report a complete explanation of their analysis and rationale for arriving at their recommendation, and (2) provide a draft for review of that staff report section to the chairperson(s) of any commission(s) that have provided recommendations before finalizing the staff report, to identify and correct any possible misunderstandings.
8. We ask the City Council to affirm, as a matter of policy to be included in the city's commission handbook, that when a commission has provided a recommendation to the Council on a decision matter before it, a member of that commission shall be invited to participate in the Council's public discussion of that matter.