



**CITY OF  
SOUTH SAN  
FRANCISCO**

**CITY COUNCIL  
PROCEDURES AND  
PROTOCOLS  
HANDBOOK**



## **PREFACE**

As provided by California Government Code Section 36813, the City Council of the City of South San Francisco establishes the City Council Procedures and Protocols Handbook contained herein.

The Handbook shall be in effect upon adoption by the City Council and shall remain in effect until such time as it is amended, or new rules are adopted in the manner provided herein. In addition to the City Council Procedures and Protocols Handbook, the City Council has included in this document other information that may be useful to the City Council, administrative staff, and the general public.

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Office of the City Clerk

**CITY OF SOUTH SAN FRANCISCO**  
**CITY COUNCIL**  
**PROCEDURES AND PROTOCOLS HANDBOOK**

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## **CHAPTER I - GENERAL POWERS AND DUTIES**

### **Introduction**

The City of South San Francisco is a municipal corporation. South San Francisco is a general law city, established pursuant to California law, with a City Council-City Manager form of government. In order to collect and clarify its procedures and policies, and as provided by Government Code Section 36813, the City Council establishes this handbook.

The Handbook is intended to assist Councilmembers in carrying out their roles, as well as to provide useful information to prospective Councilmembers and other interested citizens. Through the agreement of the City Council and staff to adhere to these practices, the effective administration of City Council affairs is greatly enhanced. Councilmembers will be provided a copy of and be familiar with the Handbook. The City Council will conduct its meetings in accordance with the guidance in the Handbook.

The City Clerk shall be responsible for the maintenance of the Handbook and for making it available to the public. It is anticipated that this Handbook will be reviewed at least biennially, in order to reflect either changes in the law or City Council procedure or policy. This handbook is not intended to be a legal statement and is not written in legal terms.

### **Mission Statement**

The City of South San Francisco's mission is to provide a safe, attractive, and well-maintained city through excellent customer service and superior programs, and a work ethic that will enhance the community's quality of life.

To that end, we will strive to nurture a partnership with the community by recruiting a diverse, inclusive, and highly skilled workforce, being an active partner in quality education, and attracting and retaining a prosperous business community, all of which will foster community pride and understanding.

South San Francisco is a place where everyone can thrive. Its high quality of life, diverse and inclusive community, livable neighborhoods, excellent services, culture of innovation, and environmental leadership ensure all people have the opportunity to reach their full potential.

### **Values**

As an organization, we are committed to:

- Diversity and Inclusion
- Livability
- Sustainability
- Innovation

## **Guiding Principles**

- Affordable, Safe, Attractive Amenity-Rich Neighborhoods
- High-quality and Accessible Services, Facilities, and Amenities for Residents at All Stages of their Lives
- A Safe, Convenient, and Accessible Transportation Network well-connected to the Region
- A Resilient Community
- A Prosperous Downtown and Local Economy

## **City Council**

As a general law city, South San Francisco derives its authority from and is subject to the general laws of the State of California. Its authority to regulate is limited to those powers authorized by the State of Constitution and laws adopted by the State Legislature. South San Francisco has a five-member City Council elected at district-level seats by each of the City's five (5) districts to four-year terms on a staggered biennial basis. Councilmember terms are staggered so that a measure of continuity is maintained in the transition from one City Council to the next.

The powers of a City Council in California to establish policy are quite broad. Essentially, councils may undertake any action related to city affairs other than those forbidden or preempted by state or federal law. Specifically, the City Council shall have the power, in the name of the city, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants, which are not specifically forbidden by the Constitution and laws of the State of California.

The South San Francisco City Council acts as a body. While the Mayor has some additional ceremonial and administrative responsibilities, no Councilmember has any power or additional votes beyond those of the other members or the Mayor. In the establishment of policy, voting and in all areas except those identified below, all members are equal. Except where the law requires a certain number of affirmative votes, a majority vote of the City Council establishes policy and makes decisions for the City. While an individual member may disagree with a decision of the City Council, a decision of the majority does bind the City Council to a course of action. In turn, it is the city staff's responsibility to ensure that the policy of the City Council is implemented. Actions by city staff to implement a decision of the City Council do not reflect any bias against a Councilmember who held a minority view on that issue.

## **Roles and Responsibilities**

Councils are comprised of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to improve the quality of life in the community. In all cases, this common goal should be acknowledged even as the Council may "agree to disagree" on contentious issues.

The Mayor is not elected by the public; instead, the role rotates among members of Council in accordance with Council's established procedures. All members of the City Council, including those serving as Mayor and Vice-Mayor, have equal votes. No Councilmember has more power than any other Councilmember, and all should be treated with equal respect and provided with the same opportunities for discussion and dialogue during deliberations considered by the council.

## **Mayor**

- \* Nominated and appointed on a special council meeting held after the final declaration of the results of the preceding Council election and prior to the first regular council meeting in December during election years, and on a special council meeting held prior to the first regular council meeting in December in non-election years.
- \* Serves as the presiding officer of the City Council, preserving strict order and decorum at all publicly noticed meetings of the City Council; announces City Council decisions on all subjects; and decides all questions of order, including items to be placed on the regular council meeting agenda in communication with the City Manager, City Attorney, and City Clerk, subject to modification by the City Council.
- \* Plans and organizes with City Manager and city staff the annual City Council strategic priorities retreat.
- \* Leads the City Council into an effective and cohesive working team.
- \* Recognized as the ceremonial spokesperson for the City.
- \* Serves as the City Council's spokesperson in the media. However, when a direct inquiry is made to Councilmembers from media, members should apprise the Mayor and City Manager of communications with any media outreach, interview or presentations, when possible and if timing permits.
- \* Selects a substitute for City representation when unable to attend and speak.
- \* May call for special meetings or council study sessions as necessary in response to the scope and timing of the City Council's workload and schedule.
- \* Signs minutes or other required documents on behalf of the City when Mayor's signature is required.
- \* Appoints other councilmembers to regional or county government bodies, associations, boards, and commissions and checks in with them on their current assignments.
- \* Rotates the assignment of councilmembers to internally assigned committees that focus on direct internal city work.
- \* Responds to correspondence submitted to the full City Council on non-agenda items, regular mail or electronic communication.
- \* Oversees the administration of proclamations and plaques as adopted by the City Council.
- \* Issues proclamations and plaques as needed without formal action by the City Council. However, any councilmember may submit a request to the City Manager for such items. Certificates of Recognition and Commendations may be issued by all members without formal approval action being taken.
- \* Coordinates the annual performance evaluation of the City Manager and City Attorney.
- \* Entitled to vote on all matters and vote counts only once. Does not have veto power or the ability to break any form of vote ties.
- \* Has the discretionary decision-making authority of time allotment given to speakers or members of the public during special or regular council meetings.
- \* The Mayor may require any person addressing the Council to be sworn in as a witness and to testify under oath and must so request if directed to do so by a majority of the Council. The Mayor may administer oaths. This rarely occurs. Appeals and revocation hearings are the most likely instances when testimony is taken under oath.

## **Vice Mayor**

- \* Serves as the presiding officer when the Mayor is absent.
- \* Performs all of the duties of the Mayor in the Mayor's absence or specific duties at the request of the Mayor.
- \* Represents the City at ceremonial functions at the request of the Mayor.

## **Councilmember(s):**

- \* Uphold the highest standards of respect, civility, honesty, and leadership in the maintenance of effective intergovernmental relations; serve as role models for public service and civility; and inspire public confidence and respect in the South San Francisco government.
- \* Respect the roles of all elected officials and City staff to ensure an open and effective government.
- \* Work for the common good, not personal interest.
- \* Participate in all scheduled City Council meetings in person or virtually, as allowed by the Brown Act, and in other public forums while demonstrating respect, consideration, and courtesy to others.
- \* Prepare in advance of City Council meetings and be familiar with issues on the agenda. This includes making every effort to consult with the City Manager and ask questions with enough time for a response to be provided prior to the City Council meeting.
- \* Shall be respectful of other people's time, stay focused, and act efficiently during public meetings.
- \* Shall refrain from representing or implying, in any public forum, that they have authority to act on behalf of the City on matters outside the City's jurisdiction or that do not directly affect the City's local affairs, including matters beyond the council district they represent. This includes preparing, signing, or issuing letters of support or other documents on behalf of the City without prior authorization from the Mayor and City Council.
- \* Commit to spending time each year outside of regular City Council meetings to work with the City Manager and staff on setting goals and priorities for the City government, including the District they represent, and by attending the annual council workshop and/or working on issues that may be inhibiting the maximal achievement of City goals.
- \* Represent the City at ceremonial functions at the request of the Mayor.
- \* Represent the City on regional appointed bodies (boards, associations, ad hoc committees, and commissions) as appointed by the Mayor. Ensuring that the voice of the City is brought forth in all votes and matters addressed in those bodies.
- \* Participate in scheduled activities to increase Council effectiveness.
- \* Review Council procedures, such as these Council Protocols, biennially.
- \* Represent their respective districts and bring forth issues of concern that may affect their district(s) and may have a citywide impact.
- \* Complete all required training in a timely manner, including State-mandated AB 1234 Ethics Training, SB 827 Fiscal and Financial Oversight, Workplace Harassment Training, and Cyber Security training.
- \* Comply with filing all required Fair Political Practices Commission documentation, including the annual Statement of Economic Interests and campaign statements in a timely manner with all entities as required i.e., Successor Agency and Regional Bodies.

## **Concurrent Roles**

Members of the City Council serve as members of other entities operating on behalf of South San Francisco.

### **1. Successor Agency to the Redevelopment Agency**

The former Redevelopment Agency was established in 1979 and dissolved on February 1, 2012. Pursuant to Assembly Bill x1 26 (“AB 26”), which amended provisions of the State’s Community Redevelopment Law (Health and Safety Code sections 330000 et seq.) (“Dissolution Law”), the members of the City Council serve as the members of the Successor Agency to the former Redevelopment Agency of the City of South San Francisco (“Successor Agency”). Dissolution defines the roles and duties of the Successor Agency.

### **2. Recreation and Park District**

Originally established in 1950 as the Park, Recreation and Parkway District, this entity was reorganized as the Recreation and Park District in 1961 in conformance with Public Resources Code Section 5780 et seq. The City Council serves as the board of directors, which may organize, promote, conduct and advertise programs of community recreation, establish, maintain and operate recreation centers, parks and parkways, and provide transportation services.

### **3. Willow Gardens Parks and Parkways Maintenance District**

The City Council is the governing body for the City’s share of the property tax allocated towards the Willow Gardens Parks and Parkways Maintenance District, and the City Council serves as the board of directors of this district.

### **4. South San Francisco Public Facilities Financing Authority**

The City Council is the governing body of the Authority. The Authority shall be a public entity separate from the City and Parking Authority as established in the joint exercise of powers agreement, which may assist in the financing and refinancing of capital improvement projects of the members and other activities of the members as permitted.

## **Council Committee Assignments**

The Council may organize among its members such standing committees of two members as it may determine useful, each of which shall act as a fact-finding committee for the purpose of considering all available information on proposed legislation or matters of policy referred to it and shall make recommendations to the Council as a whole.

There should be a yearly rotation in December for city internal committees and ad-hoc bodies in order for all members of the council to gain knowledge, provide feedback and expertise on city matters. The Mayor shall assign each Council member to various standing committees annually in January. The external/regional assignments shall stay the same year over year, unless there is a vacancy created by termination of term of office, death, or other physical restrictions that do not allow a member to continue in that role. The consistency of members in each of the regional bodies is important for the representation of the city and for contextual business knowledge of the topics of that body. The confirmation will be conducted publicly at the City Council's first meeting following the City Council Reorganization, typically in January each year, under "Items from Council," with a roll-call vote of approval by members. The item will be placed on the agenda by the City Manager’s office.

Participation and attendance at those committee meetings is important. Continued absences from meetings without good cause may result in removal from a committee at the discretion of the Mayor, taking into consideration advice from other committee members.

From time to time, ad hoc committees may be organized by the Mayor to address special concerns that may be of short duration. Additionally, each Councilmember may be assigned by the Mayor as liaison to various boards, committees and commissions, and other public agencies or quasi-public agencies. It is the prerogative of the Mayor, taking into consideration relative length of Council service, individual Councilmember preference and equivalency, to assign individual Councilmembers to various committees.

### **San Mateo Council of Cities/City Selection Committee**

Before each Council of Cities meeting, the Mayor shall consult the City Council on the direction for the first vote for a position. On the first vote for a position opened and advertised and subsequently selected by the San Mateo Council of Cities/City Selection Committee, the City's designated representative which can be the (i.e., Mayor or Vice Mayor or the presiding officer indicated via a formal proxy) must vote in accordance with the City Council's direction. All subsequent votes are left to the discretion of the designated representative.

If the Mayor is not able to attend the monthly San Mateo Council of Cities/City Selection Committee meeting the order of seniority will take place and the Vice Mayor will serve as proxy by submitting a formal document and submitting, it to the county clerk of the board via the City Manager's office. At these meetings, the Mayor, Vice Mayor or the most senior member of council (determined by election date) will introduce the council delegation attending and representing the City at these events/meetings.

### **Role in Disaster**

The City Council has some special, extraordinary powers in the case of a disaster. Some meeting restrictions and expenditure controls are eased in such extreme situations. In critical situations the City Council may be directed to assemble in the City's Emergency Operations Center (EOC), to provide policy guidance and to receive information.

Refer to **South San Francisco Municipal Code Chapter 2.72**, which establishes the Disaster Council under state law, and the City's Emergency Operation Plan. For the statutory provisions authorizing cities to establish disaster relief bodies, see Gov. Code § 8610 et seq. For the statutory provisions on the State Emergency Council's rules and regulations governing disaster services workers, see Gov. Code § 8580.

#### **2.72.010 Purposes.**

The declared purposes of this chapter are to provide for the preparation and carrying out of plans for the protection of persons and property within this city in the event of an emergency; the direction of the emergency organization; and the coordination of the emergency functions of this city with all other public agencies, corporations, organizations and affected private persons. (Ord. 622 § 1, 1971)

#### **2.72.020 Definition.**

As used in this chapter, "emergency" means the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this city caused by such

conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease or earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of this city, requiring the combined forces of other political subdivisions to combat. (Ord. 938 § 1, 1983; Ord. 622 § 2, 1971)

**2.72.030 Disaster Councilmembership.**

The city disaster council is created and shall consist of the following:

- (a) The Mayor, who shall be chairman;
- (b) The director of emergency services, who shall be vice-chairman;
- (c) The assistant director of emergency services;
- (d) Such chiefs of emergency services as are provided for in the current emergency plan of this city, adopted pursuant to this chapter;
- (e) Such representatives of civic, business, labor, veterans, professional or other organizations having an official emergency responsibility, as may be appointed by the director with the advice and consent of the City Council. (Ord. 622 § 3, 1971)

**2.72.040 Disaster council powers and duties.**

It shall be the duty of the city disaster council, and it is empowered, to develop and recommend for adoption by the City Council, emergency and mutual aid plans and agreements and such ordinances and resolutions and rules and regulations as are necessary to implement such plans and agreements. The disaster council or selected representation therefrom shall meet upon call of the chairman or, in their absence from the city or inability to call such meeting, upon call of the vice-chairman. (Ord. 622 § 4, 1971)

**2.72.050 Director and assistant director of emergency services.**

- (a) The offices of Director of Emergency Services and Assistant Director of Emergency Services are created. The City Manager shall be the director of emergency services, and the Fire Chief shall be the assistant director of emergency services.
- (b) The order of succession to the office of the director of emergency services shall be the assistant director and thereafter the police chief. (Ord. 1053 § 6, 1989; Ord. 622 § 5, 1971)

**2.72.060 Powers and duties of the director and assistant director of emergency services.**

- (a) The director is empowered to:
  - 1) Request the City Council to proclaim the existence or threatened existence of a local emergency if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a local emergency is proclaimed by the director, the City Council shall take action to ratify the proclamation within seven days thereafter or the proclamation shall have no further force or effect;
  - 2) Request the governor to proclaim a state of emergency when, in the opinion of the director, the locally available resources are inadequate to cope with the emergency;
  - 3) Control and direct the effort of the emergency organization of this city for the accomplishment of the purposes of this chapter;
  - 4) Direct cooperation between and coordination of services and staff of the emergency organization of this city; and resolve questions of authority and responsibility that may arise between them;

- 5) Represent this city in all dealings with public or private agencies on matters pertaining to emergencies as defined herein;
- 6) In the event of the proclamation of a local emergency as herein provided, the proclamation of a state of emergency by the Governor or the Director of the State Office of Emergency Services, or the existence of a state of war emergency, the director is empowered:
  - (A) To make and issue rules and regulations, on matters reasonably related to the protection of life and property as effected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council,
  - (B) To obtain vital supplies, equipment and such other properties found lacking and needed for the protection of life and property and to bind the city for the fair value thereof and, if required immediately, to commandeer the same for public use,
  - (C) To require emergency services of any city officer or employee and, in the event of the proclamation of a state of emergency in the county in which this city is located or the existence of a state of war emergency, to command the aid of as many citizens of this community as they deem necessary in the execution of their duties; such persons shall be entitled to all privileges, benefits and immunities as are provided by state law for registered disaster service workers,
  - (D) To requisition necessary personnel or material of any city department or agency, and
  - (E) To execute all their ordinary power as City Manager, all of the special powers conferred upon them by this chapter or by resolution or emergency plan pursuant hereto adopted by the City Council, all powers conferred upon them by any statute, by any agreement approved by the City Council and by any other lawful authority.
- (b) The assistant director shall, under the supervision of the director and with the assistance of emergency service chiefs, develop emergency plans and manage the emergency programs of this city; and shall have such other powers and duties as may be assigned by the director. (Ord. 1053 § 7, 1989; Ord. 622 § 6, 1971)

**2.72.070 Emergency organization.**

All officers and employees of this city, together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations and persons who may by agreement or operation of law, including persons impressed into service under the provisions of Section 2.72.060(a)(6)(C), be charged with duties incident to the protection of life and property in this city during such emergency, shall constitute the emergency organization of the city. (Ord. 622 § 7, 1971)

**2.72.080 Emergency plan.**

The city disaster council shall be responsible for the development of the city emergency plan, which plan shall provide for the effective mobilization of all of the resources of this city, both public and private, to meet any condition constituting a local emergency, state of emergency or state of war emergency, and shall provide for the organization, powers and duties, services and staff of the emergency organization. Such a plan shall be in effect as of the date of an approving resolution by the City Council. (Ord. 622 § 8, 1971)

### **2.72.090 Relationship with San Mateo Operational Area.**

The city of South San Francisco shall be a member of the San Mateo Operational Area Emergency Services Organization, which serves to coordinate civil defense and disaster plans, programs, and agreements among the political subdivisions in the County of San Mateo and between the political subdivisions and the Office of Emergency Services of the State of California. The Mayor or an alternate from the City Council shall be a voting member of the San Mateo Operational Area Emergency Services Council, which serves as the governing body of the San Mateo Operational Area Emergency Services Organization. (Ord. 938 § 2, 1983; Ord. 622 § 9, 1971)

### **2.72.100 Expenditures.**

Any expenditures made in connection with emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the city. (Ord. 622 § 10, 1971)

### **2.72.110 Penalty for violations.**

It is a misdemeanor, punishable by a fine of not to exceed five hundred dollars, or by imprisonment for not to exceed six months, or both, for any person, during an emergency, to:

(a) Willfully obstruct, hinder or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter;

(b) Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if such act is of such a nature as to give or be likely to give assistance to the enemy or to imperil the lives or property of inhabitants of this city, or to prevent, hinder or delay the defense or protection thereof;

(c) Wear, carry or display, without authority, any means of identification specified by the emergency agency of the state. (Ord. 622 § 11, 1971)

### **Council Reorganization**

Newly elected Councilmembers are sworn into office at a special meeting in December following a regular municipal election in even-numbered election years. 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. 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 (California Government Code Section 54952.1). A reception will be held immediately following the reorganization meeting, provided that there is no other emergent matter occurring at that time or a declared State of Emergency.

The City Council shall meet annually to select one of its members as Mayor and one of its members as Vice-Mayor. The meeting to determine organization or reorganization of the City Council (i.e., selection of Mayor and Vice-Mayor) shall be held on or before the Tuesday that immediately precedes the Wednesday of the first regularly scheduled meeting of the City Council in December, unless the Mayor and City Council select a different date in discussion with the City Clerk's office. In even-numbered years in which a regular City Council election occurs, the reorganization shall follow certification of the election results by the San Mateo County Office of Elections.

**Selection of Mayor and Vice Mayor - Rotation by District:**

Members **rotated in order of the district number** they represent. With the advent of district elections, it is important to ensure that every district has an equal chance at representation through the Mayorship.

In the event of new councilmembers being elected and beginning their term on their district’s “Mayor year,” it will be required for any new Councilmember to start their first year as Councilmember, then the subsequent year as Vice Mayor, and the third year as Mayor.

The order will temporarily skip that district’s new councilmember to the next in line, until that new Councilmember is in their **third year**, where they will have some experience that allows them to serve more effectively. The order will resume following the temporary displacement.

This will allow for newly elected Councilmembers to gain experience instead of immediately assuming the Mayor role. A councilmember **does not** have to be Vice Mayor the year immediately preceding their Mayoral year.

**Order of Rotation per District**

<b>2025</b> District 5	<b>2026</b> District 1
<b>2027</b> District 2	<b>2028</b> District 3
<b>2029</b> District 4	<b>2030</b> District 5

*(Appendix A: Selection of Mayor and Vice-Mayor/Council Reorganization)*

**Vacancies in Elected Offices**

The filling of vacancies in the offices of City Council, City Treasurer, and City Clerk shall be pursuant to Government Section 36512 and Municipal Code Section 2.18.040. Per Government Code Section 36512, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date, not less than 114 days from the call of the special election.

If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy shall hold office until the next general municipal election that is scheduled 130 or more days after the date the council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office. If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent.

Additionally, pursuant to Municipal Code Section 2.18.040, the City Council may appoint an individual to serve as an interim City Council member. The term of an interim appointee shall be from the date of the appointment until a new member is elected to the Council at a special election. If an appointment is made pursuant to the Municipal Code, Council shall, at the same time it makes the interim appointment, call for a special election to fill the vacancy. This section needs to be updated to match recent amendments to the Elections Code. The Elections Code requires the special election after an interim appointment to be held on the next regularly established election date or regularly scheduled municipal election to be held in the city not less than 114 days from the call of the special election.

### **Compensation**

Each member of the City Council receives a monthly salary as provided for in the **South San Francisco Municipal Code Chapter 2.12**, Government Code Section 36516, as amended. Salaries are payable at the same time and in the same manner as salaries are paid to other officers and employees of the city. Attendance at pertinent meetings, conferences, or seminars will be reimbursed in the same manner as for city employees.

City Council compensation is governed by state law. Under Government Code sections 36516 and 36516.5, Council compensation can only be adjusted by ordinance. Changes only go into effect when a member of the Council begins a new term, and increases can only be 5% per year since the last adjustment.

Councilmembers are optional members of the Public Employees' Retirement System and also receive Social Security coverage during their term of office. They also are provided with various insurance benefits. The established salaries are exclusive of any amount payable to each member of the Council as reimbursement for actual and necessary expenses incurred in the performance of official duties for the City. (*Appendix E: Summary of Elected Officials' Benefits*)

### **City Council – Manager Form of Government**

#### **Appointment of City Manager and City Attorney**

The City Council appoints two positions within the city organization: the City Manager and the City Attorney (currently a contract attorney). Both positions serve at the will of the City Council as a body. The City Attorney serves as parliamentarian during City Council meetings. The role of the parliamentarian is advisory and consultative; the chair has the power to rule on questions of order.

#### **Role of the City Attorney**

The City Attorney's Office represents and advises the City Council, City Departments, Boards, Commissions, officers, and employees of the City of South San Francisco on all legal matters relating to City business and official activities. In addition, the City Attorney's Office prepares all legislation and legal documents, reviews City contracts and agreements, prosecutes violations of the municipal code, and manages litigation on behalf of and against the City.

#### **Role of the City Manager**

The City Manager is an employee of the City and has an employment agreement that specifies certain terms of employment, including an annual performance evaluation by the City Council.

The City Manager is responsible for all other personnel appointments within the City with the exception of the City Attorney's office. The employment relationship between the City Council and the City Manager honors the fact that the City Manager is the Chief Executive Officer of the City, who works for five independently elected officials. The City Council and City Manager should be a participatory team.

Councilmembers should avoid situations that can result in the City staff being directed by one or two members of the Council. Individual councilmembers do not have the authority to direct staff – only the City Manager does. This ensures staff neutrality and that policy direction comes from the Council as a body. Regular communication between the City Council and the City Manager is important in managing open communication. All dealings with the City Manager, whether in public or private, should respect the authority of the City Manager in administrative matters. The City Council evaluates the performance of the City Manager on an annual basis to ensure that both the City Council and the City Manager are in agreement about performance and goals.

As in any professional relationship, the City Manager must keep the City Council informed. The City Manager respects and is sensitive to the political responsibility of the City Council and acknowledges that the final responsibility for establishing the policy direction of the City is held by the City Council.

The City Manager's power and authority include the ability to:

- Review all agenda documents before preparing the agenda for any regular or special meeting of the City Council.
- Direct the work of all appointive City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council.
- Recommend to the City Council the adoption of polices or procedures that the City Manager may deem necessary for the health, safety, or welfare of the community.
- Conduct research in administrative practices in order to bring about greater efficiency in City government.
- Execute and issue letters of support in communication with the Mayor for funding support as directed by a majority of the City Council.

### **Role of the City Clerk**

The City Clerk is an independently elected official who serves as the official custodian of the City's legislative records and supports the administration of City Council meetings. The City Clerk oversees the preparation of City Council agendas and the noticing of meetings to ensure compliance with applicable laws, including the Ralph M. Brown Act, the Political Reform Act of 1974, and the California Public Records Act.

As Clerk of the Council and Successor Agency, the City Clerk maintains legislative records, serves as the archivist of City documents, and maintains custody of the City seal. Through these responsibilities, the City Clerk and staff work to ensure transparency, accuracy, and service to the residents of South San Francisco.

## **CHAPTER II – CITY COUNCIL NORMS AND PROTOCOLS**

### **Conduct of Meetings**

The Council should refer to one another formally during Council meetings as Mayor, Vice-Mayor, or Councilmember, followed by the individual's last name. Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. Be respectful of diverse opinions. Councilmembers have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community. Councilmembers are role models for residents, businesspeople, and other stakeholders involved in public debate. At meetings, Councilmembers should agree to sit at the dais, use the microphone and chair assigned to them, and not sit elsewhere during a meeting. (*Appendix B: Guide to Conducting Meetings*)

### **Council Conduct with Staff**

The Council shall treat all staff as professionals, expecting clear and honest communication that respects the abilities, experience, and dignity of everyone. There shall be no demeaning or belittling of staff during public meetings. If a specific performance issue arises, the matter shall be addressed privately with the City Manager through correspondence or conversation and should not be shared publicly or with department heads. As with Council colleagues, practice civility, respect, and decorum in all interactions with City staff.

Requests and questions of City staff should be directed to the City Manager or designee. The City Manager should be copied on any request to Department Heads or other city employees. Councilmembers should not set up meetings with department staff directly but work through the City Manager's Office. Routine, easily retrievable information will be provided as expeditiously as possible.

The Council shall not attend any city staff or departmental meetings unless requested by the City Manager. This includes and is not limited to if the Councilmember does not say anything, the Councilmember's presence may imply support, show partiality, intimidate staff, or hamper staff's ability to do their job objectively. Councilmembers must not direct staff, including department heads, outside of properly agendaized Council action. Councilmembers must not individually interfere in administrative functions.

### **Staff Assistance**

The governance of a City relies on the cooperative efforts of elected officials, who set policy, and City Staff, which analyze problems and issues, make recommendations, and implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

In order to effectively discharge the responsibilities of elected office, Councilmembers are entitled to receive assistance from city employees. It is the role of Councilmembers to pass on concerns and complaints on behalf of their constituents. It is not, however, appropriate to pressure staff to solve a problem in a particular way. It is also recognized that under the Council/Manager form of government, the City Manager has the responsibility of day-to-day affairs of the City, consistent with established Council policy.

**Responses to a Councilmember’s written request for information shall be distributed to all Councilmembers. The councilmember should not need to be identified when the information is shared to all councilmembers. Correspondence to political organizations or persons in support of pursuit of political office is not to be prepared using city resources.**

Councilmembers shall avoid any staff interactions that may be construed as trying to shape staff recommendations. Councilmembers shall refrain from coercing staff into making recommendations to the Council as a whole.

Councilmembers serving on intergovernmental bodies receive the assistance of staff assigned by the City Manager. The primary responsibility of assigned staff is to review issues before the intergovernmental body as they may affect the City, update the councilmember on past or current action items or legislation pertaining to that body, support the councilmember with correspondence to that body, scheduling with those meetings and at times attend the meeting with the councilmember, as deemed appropriate by the City Manager and advise and assist the Councilmember in presenting issues.

Requests for assistance with speech and correspondence preparation should be made to the City Manager. Each member of the Council is given equal consideration. However, since it is the Mayor's responsibility to correspond with individuals and organizations on behalf of the City, the Mayor's correspondence work is given priority.

City Councilmembers may alert staff through the City Manager, or while copying the City Manager, of any requested amendments or suggestions to agenda items, so that staff may have adequate time to prepare such amendments ahead of council meetings.

**Political Support from Staff During Elections:**

The City Clerk shall timely notify the City Council and executive staff of all election-related information, including the list of qualified candidates and an overview of applicable election processes and timelines during the election period.

During the time period between the close of the candidate filing period and the related election, certain guidelines apply.

- \* **First**, staff **shall not**, except as provided herein, compile or distill information electronically or otherwise in response to a request for information from a candidate for elective city office, including a sitting elected official.
- \* **Second**, Councilmembers and other elected city officials may continue to request information that requires the creation of new documents or the distillation of data if the request for such data is presented to and **approved** by the Council.
- \* **Third**, any public information provided to a candidate for an elected city office shall be provided to **all** candidates for that office.

In addition, some professionals (e.g., City Manager and Assistant City Manager) have a professional Code of Ethics that precludes politically partisan activities or those that give the appearance of political partisanship.

### **Council Mail**

Except when mail is marked “confidential”, the City Manager or its immediate designee is authorized to receive and open all regular post office mail addressed to Councilmembers, and to give it immediate attention. Mail marked “personal” or “confidential” will be transmitted to the Councilmembers unopened. Administrative business referred to in mail opened by the City Manager or designee and not requiring Council action is promptly attended to, and Councilmembers are informed of both the issue and its disposition.

Any communication relating to a matter coming or pending before the Council will be included in the agenda packet for the meeting at which the item is to be considered.

Each Councilmember, including the Mayor and Vice Mayor, shall exercise the best use of city letterhead in all correspondence. Councilmembers are allowed to correspond to constituents directly via mail using city letterhead and or other elected officials as long as they don’t officially state an opinion on behalf of the city or the entire City Council in the correspondence.

### **Subpoenas**

The Council has the power and authority to compel the attendance of witnesses, to examine them under oath, and to compel the production of evidence. Subpoenas signed by the Mayor and attested by the City Clerk may be issued in the name of the City. Disobedience of a subpoena or the refusal to testify on other than constitutional grounds may be deemed contempt.

### **Use of the City Seal**

The term "**city seal**" is used to refer to two different items: the official corporate seal and the city logo, which appears on business cards, letterhead, and so forth.

The corporate seal, which is in the custody of the City Clerk, is a stamp that leaves a visible and tactile impression upon a document. The seal is circular, has a two-inch diameter, and the words "**Seal of the City of South San Francisco Incorporated September 19, 1908**". The use of the corporate seal is primarily a matter of custom and ceremony.

The city logo appears frequently and is what most people identify as the city seal. It is circular, exists in a variety of sizes, says "City of South San Francisco, California," and has a detailed rendering of city scenes in the center. It is used to associate items and materials with the City and is not to be used in any manner that would imply the official sanction of the City when such is not the case. For anything other than official city business or city-related activities, the logo/seal may not be used to imply that a user represents or is in any way officially associated with the City except by specific written authorization of the City Manager.

Councilmembers who abuse the use of the city seal in intentional political and campaign activities, such as paid campaign advertisements, shall apologize publicly for their abuse of city resources. The councilmembers will also do whatever is in their power to cease and desist the spread and distribution of such campaign materials.

### **Conflict of Interest**

The City is required to adopt a Conflict-of-Interest Code, which the City Clerk reviews every two (2) years, and the City Council amends when circumstances change. (Government Code Sections 87300-87313), Councilmembers are prohibited by law:

- (1) from having a financial interest in contracts made by them in their official capacity or by the Council (Government Code Section 1090 et seq.) and
- (2) from making, participating in making, or in any way attempting to use their official positions to influence a governmental decision in which they know or have reason to know they have a financial interest. (Political Reform Act, Government Code Section 87100 et seq.)

Contracts entered in violation of conflict-of-interest provisions are void, and financial penalties are imposed for the failure to disclose.

Whenever the Council is about to commence consideration of a matter and a member has reason to believe they have a conflict of interest, the reason must be disclosed on the record, a statement of intent to abstain must be made, and the Councilmember must step down from the dais. A member may remain on the dais for consent items, as long as they are voted on with other consent items and not taken individually. Once a year, and within thirty (30) days of assuming office, Councilmembers must file disclosure statements indicating potential conflicts of interest for both the Councilmember and the Councilmember's spouse and dependent children.

### **Levine Act Report (SB 1439)**

The purpose of the Levine Act is to prevent public officials who are members of local government agencies, including the City Council, from being influenced by campaign contributions from individuals and parties appearing before them.

This summary of the Levine Act does not constitute legal advice. The principal requirements are listed below:

- While a license, permit, or other entitlement for use from the City is pending, and for 12 months after a final decision is made on the matter, a Councilmember may not solicit, accept, or direct a contribution of more than \$500 from a party, a participant with a financial interest, or their respective agents.
- A Councilmember may not make, participate in making, or in any way use their official position to influence a decision regarding a license, permit, or other entitlement if they have received a contribution of more than \$500 from a party, a participant, or their respective agents within the previous 12 months unless they have returned the contribution.
- A party to a proceeding involving a license, permit, or other entitlement for use pending before the City in the proceeding must disclose any contribution of more than
- \$500 made to a Councilmember within the previous 12 months was made by them or their agents.

Additional information regarding the Levine Act and associated regulations can be found below:

- [FPPC – 2023 Changes to Section 84308](#)
- [Government Code Section 84308](#)

Councilmembers unsure about potential conflicts are encouraged to discuss such issues with the City Attorney in advance of the Council meeting for which the item is scheduled. **While the City Attorney will advise Councilmembers on conflict-of-interest issues, only the Fair Political Practices Commission (FPPC), by written letter, can confer immunity from subsequent enforcement action. The FPPC has sole jurisdiction to administer, interpret, and enforce the Political Reform Act statute and the newly adopted regulations implementing the amended statutory language.**

### **FPPC Form 801 - Donations to the City**

The conflict-of-interest laws generally apply when a gift in the form of a donation is made to a particular Councilmember. However, where such a donation is made to the public agency rather than to the public official, it does not qualify as a gift under the conflict-of-interest laws pursuant to California Code of regulation Section 18944. Thus, under the limited circumstances of a gift to the public agency and provided that such gift is made consistent with the provisions of Section 18944, the gift does not create a conflict of interest should the donor of the gift be an individual or business that may at some point in the future have an item before the City Council for consideration.

Officials must report the payment within 30 days of the date made by filing FPPC Form 801 (Payment to Agency Report) with the City Clerk's Office.

*(Appendix G: Donations to the City of South San Francisco)*

### **FPPC Form 803 -Behested Payment Reporting**

A behested payment is when a state or local elected official or a member of California's Public Utilities Commission solicits a donation to an organization, such as a 501(c)(3), that is used for legislative, governmental or charitable purposes. These types of payments are not considered campaign contributions or gifts, but are payments made at the "behest" of elected officials to be used for legislative, governmental or charitable purposes.

While state law limits the amount of campaign contributions and gifts, there are no limits on behested payments. State law requires the reporting of behested payments if they total \$5,000 or more per calendar year from a single source. There are no reporting requirements for payments up to \$4,999.99.

Officials must report the behested payments within 30 days of the date they are made by filing FPPC Form 803 (Behested Payment Report) with the City Clerk's Office.

### **City Council Training Expenses**

The following guidance on the use of public funds is provided by the Fair Political Practices Commission (FPPC) as part of its online AB 1234 training:

“Public officials deal with many difficult and complex issues. It can be helpful to attend conferences to learn more about these issues and consult with officials from other jurisdictions about what they do. There are a number of conferences that offer valuable information to help local officials better serve their communities. But what happens if an official says they are going to a conference and then misses all or most of the educational sessions? Such a scenario raises both legal and ethical issues.”

The **legal issue** is that all expenditures of public money must support a public purpose. The public purpose of sending someone to a conference is for the attendee to acquire new information and knowledge to help better serve the community. **If the official doesn't do this (and instead uses the trip as a recreational opportunity), the official risks being accused of using public resources for non-public, personal purposes.**

The **ethical issue** is whether the charge can be made that the official misrepresented his or her purpose in traveling to the conference location. If the official said it was to attend the conference, but the official really didn't, then both the official's colleagues and the public's trust in the official's truthfulness will be diminished.

*(Appendix C: City Council Travel Budget and Expense Reimbursement Policy)*

### **City Issued Credit Cards**

City-issued credit cards shall only be used for City expenses. Councilmembers must submit original or legible digital receipts within two weeks of expenditure to the City Manager's office with an explanation as to the nature of the expense. Failure to consistently provide credit card receipts will result in Councilmembers losing the privilege of having a City-issued credit card. **The City will not reimburse Councilmembers for the cost of attendance at any political event.**  
*(Appendix D: City Council Request for Travel and Expense Reimbursement Forms)*

### **Use of Public Resources for Political Purposes**

The same rules that prevent personal use of public resources also prohibit political use of public resources. This means public officials may not use agency equipment, supplies, or staff time for political purposes. "Political purposes" includes activities to promote or defeat candidates for public office; they also include campaign activities promoting the passage or defeat of ballot measures.

- **Consequences of Violations:** Misuse of public resources for personal or political purposes is punishable by:
  - Civil penalties of up to \$1,000 a day, plus three times the value of the resource used.
  - Criminal penalties include a two- to four-year prison term and being disqualified from holding public office.
  - Prosecution for income tax evasion, with associated penalties under federal law.
  - Administrative or civil penalties under the Political Reform Act for failure to report the value of the misused resources as a campaign contribution if the official is running for office.

Note too that local officials have also been sued by private parties seeking to force the local officials to pay back the dollar value of the public resources the private parties believe that the officials misused.”

### **Equipment and Supplies**

The City provides Councilmembers with a computer, cellular telephone, iPad, accessories, and credit card. The City Council should use city-provided equipment consistent with the City Council policy for the use of telecommunications equipment.

*(Appendix F: City Council Policy for the use of telecommunication equipment)*

## CHAPTER III - CITY COUNCIL MEETINGS

### Meetings

The City Council holds various types of meetings. All meetings of the City Council (except closed sessions held pursuant to state law) are open to the public.

- ❖ **Regular Meetings:** Regular meetings are held on the second and fourth Wednesdays of each month at 6:30 p.m. in the Council Chambers of the Library | Parks and Recreation Center, 901 Civic Campus Way, South San Francisco, CA. In the event it becomes necessary to change the place of the meeting, public notice must be given by posting the change at the entrance to the regular meeting place and posted online. Whenever any regular meeting falls on a public holiday, the regular meeting is held on the following business day. The Successor Agency meets on the second Wednesday of each month, in the same location, starting at 6:30 p.m.
- ❖ **Special Meetings:** A special meeting may be called at any time by the presiding officer or by a majority of the Councilmembers, by providing written notice twenty-four (24) hours in advance to each member of the Council electronically or any other means that ensures receipt. Written notice may be dispensed with for any member who at or prior to the time the meeting commences files a written waiver of notice or for any member who is actually present at the time the meeting convenes. Notice of the meeting must be posted at least twenty-four (24) hours prior to the special meeting in a location freely accessible to members of the public. Only business described in the notice may be transacted and the notice requirements apply even if the entire meeting is a closed session.
- ❖ **Emergency Meetings:** An emergency meeting dealing with matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities may be held without complying with either the twenty-four (24) hour notice or posting requirements. However, the presiding officer must inform any newspaper and radio or television station who requested notice of special meetings one (1) hour prior to the emergency meeting, if possible. After the meeting, the Council must post the minutes, the people notified of the meeting, the roll call vote and any action taken. This information must be posted in a public place for ten (10) days.
- ❖ **Adjourned Meetings:** The City Council may adjourn any meeting to a later time, date and place. If the subsequent meeting is conducted within five (5) days of the original meeting, matters on the agenda for the original meeting may be considered at the subsequent meeting. Less than a quorum may adjourn. A copy of the order or notice of adjournment must be visibly posted on or near the door of the place where the meeting was held within **twenty-four (24) hours after the time of the adjournment.** When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, the meeting is held at the usual hour specified for regular meetings. No adjournment may be for a longer period than the next regularly scheduled meeting.
- ✓ **Continued Items:** When a meeting is adjourned or an item is continued to another date, generally the continued item will be placed first on that portion of the agenda at that meeting; however, where deemed necessary, the City Clerk, with the concurrence of the City Manager and Mayor, may place a continued item in a different order on the agenda.

Any matter may be continued to a subsequent meeting. When a Councilmember is absent from an earlier meeting at which a matter is discussed and that matter is continued, it is the duty of that member to become acquainted with the issues discussed by reviewing relevant documents, reading any available minutes and, meeting with the City Manager to get updated and if possible, listening to, viewing the recording and reading the minutes of the meeting.

Any item or hearing may be continued to any subsequent meeting in accordance with the procedures set forth for the adjournment of meetings. If a hearing is continued to a time less than twenty-four (24) hours after the time specified in the original hearing notice, a copy of the notice of continuance of the hearing must be posted immediately following the meeting at which the determination to continue the matter was made.

- ❖ **Closed Sessions:** Closed sessions, sometimes called executive sessions, are duly held meetings or portions of meetings, which are not open to the public and news media. Closed sessions must be held in accordance with the provisions of the Brown Act. Matters discussed in closed session are considered confidential. The Council may vote to sanction or fine any Councilmember, the City Manager, City Attorney, or department head who, without authorization, discloses the substance of any discussion which took place during a closed session.

Additionally, attendance at a closed session should be limited to those actually necessary to advise or take direction from the Council. This may include the City Attorney, senior management staff, experts, negotiators, consultants, and legal staff. Third parties not serving as agents of the City cannot attend, with the exception of witnesses in the event of a closed session to hear charges or complaints under Government Code Section 54957.

- ❖ **Study Sessions:** Study sessions or work sessions, if needed, are generally held in the Council Chambers and are considered special meetings pursuant to the Brown Act. The time and location for such sessions may be changed by the City Manager with appropriate notice. Study/work sessions are open to the public and are meetings for the purposes of the Brown Act, but such sessions are not intended to constitute regular meetings. Usually, at such sessions, no motions are to be offered and no formal action is to be taken. The primary purpose of such sessions is to provide background information to members of the Council. Public comments at study sessions are limited to the subject of the study session and will be received during the public comments section of the study session. No Council comments, special recognitions or committee reports shall occur at study sessions.

### **Meeting Cancellation**

Any meeting of the Council may be cancelled in advance by a majority of the Council. The City Manager may cancel a meeting in the case of an emergency or when a majority of members have provided notice of their unavailability to attend a meeting.

### **Quorum**

A majority of the Council in office constitutes a quorum for the transaction of business, but a lesser number may adjourn from time to time and may compel by a notice the attendance of absent members refusing or neglecting to attend meetings under Government Code Section 36813. Disobedience of the notice may be punished at the discretion of the Council by a fine. The notice may be by any means giving actual notice to appear and may be given by the City Clerk or any person authorized by the Council.

When there is no quorum either in person or a combination of in person and virtual, the Mayor, Vice-Mayor, or any Councilmember may adjourn a meeting, or if no Councilmember is present, the City Clerk may adjourn a meeting.

### **Councilmember Seating in Council Chambers**

The Mayor sits in the middle seat at all formal in-person Council meetings. The Vice Mayor is seated immediately on the right side next to the Mayor. The former Mayor, if still in office, will sit on the left of the Mayor, if not the assignment will be left at the will of the current Mayor. The other Councilmembers will join in as per the will of the current Mayor. The new Mayor shall exercise the right to assign the seats of the two Councilmembers accordingly.

### **Call to Order and Roll Call**

The presiding officer takes the chair at the hour appointed for the meeting and calls the Council to order. Before proceeding with the business of the Council, at the request of the presiding officer, the City Clerk or designee calls the roll. In the absence of the Mayor and the Vice-Mayor, the City Clerk or designee calls the Council to order, whereupon a temporary presiding officer is elected by a majority of the Councilmembers present. Upon the arrival of the Mayor or the Vice-Mayor, the temporary presiding officer relinquishes the chair at the conclusion of the business then before the Council.

### **Order of Business**

For a regular or special meeting, the City Council will take up its business for consideration and disposition in the order prescribed. The Mayor or Presiding Officer may, with the consent of the City Council, modify the order of the agenda

Items may be placed on the Consent Calendar by the City Manager when such items are expected to be routinely approved without discussion or debate. The Consent Calendar shall be voted upon as one item, provided, however, that Councilmembers may request that an individual item be removed from the Consent Calendar, in which case the item shall be considered after the vote on the remainder of the Consent Calendar. Any item pulled from the consent agenda may be up for discussion and a brief staff explanation will be provided to provide context or answer the question or reason the item was pulled/removed from the consent calendar. Members of the public will only have one opportunity to address the council on ALL items on the consent calendar; there will not be separate time allotted for each individual item on the consent calendar, if more than one item is commented by a member of the public.

### **Agenda Order**

The City Manager, with prior approval of the Mayor, is authorized to make changes to the agenda of the Council, and the City Clerk shall prepare and publish the agenda. In an effort to highlight an agenda item, or to address the growing interest of a particular agenda item, the City Council, may direct the City Manager to review and change the agenda and may take matters up out of order, any member may bring this up and a vote will be taken if there is a dissent from any of the members present.

The Order of items for **Regular meetings** shall be as follows:

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Levine Act Disclosures (SB 1181)
5. Announcements from staff
6. Presentations (shall not exceed fifteen minutes)
7. Council Comments/Requests/Honoring the Life of Requests
8. Public Comments (Total time allotment of 30 minutes)
9. Consent Calendar - *All matters under the Consent Calendar are considered to be routine and noncontroversial. These items will be enacted by one motion, without discussion, and **are not read individually**. If, however, any Council member(s) wishes to comment on an item, they may do so before action is taken on the Consent Calendar. Following comments, if a Council member wishes to discuss an item, it will be removed from the Consent Calendar and taken up in order after adoption of the Consent Calendar.*
10. Public Hearing
11. Administrative Business
12. Items from Council/Committee Reports/Announcements
13. Closed Session
14. Adjournment

The Order of items for **Special meetings** shall be as follows:

1. Call to Order
2. Roll Call
3. Public Comments – *Comments are limited to items on the Special Meeting agenda.*
4. Consent Calendar - *All matters under the Consent Calendar are considered to be routine and noncontroversial. These items will be enacted by one motion, without discussion, and **are not read individually**. If, however, any Council member(s) wishes to comment on an item, they may do so before action is taken on the Consent Calendar. Following comments, if a Council member wishes to discuss an item, it will be removed from the Consent Calendar and taken up in order after adoption of the Consent Calendar.*
5. Public Hearing
6. Administrative Business
7. Closed Session
8. Adjournment

## **LEGISLATIVE MATTERS/ ACTIONS**

The Mayor and/or the City Council may take several different types of actions.

- ❖ **Presentations:** The total amount of time for all presentations **shall not exceed fifteen minutes** per meeting unless otherwise approved by the Council. This includes presentations from staff, community members or a group, or by a councilmember. It should be the aim that the total amount of time for all presentations shall not exceed fifteen minutes per meeting. The council may motion to vote to move presentations to future meetings or to the end of the meeting after fifteen minutes have passed.
- ❖ **Proclamations:** Proclamations are issued by the Mayor without formal action by the Council to be presented at an appropriate function. Proclamations are public announcements directing attention to a person, an organization, or an event, or bringing awareness or commemorating a holiday or cause of historic significance. They can also be

issued to individuals such as a Citizen of the Year, a retiring employee, or a recipient of the International Year of the Child. Proclamations will be issued to Board and Commissioner members who have served the authorized maximum number of terms to acknowledge their contributions to the City of South San Francisco. Proclamations may be requested by any member of the Council. They will be presented at a regular council meeting and the Mayor may designate a councilmember to read the proclamation into the record. All members of the City Council should make every effort to sign the proclamation prior to the start of the council meeting in which it will be presented, unless unforeseen circumstances prevent them from doing so. Proclamations for recipients in-person will be added under Presentations, and proclamations without in-person recipients, along with external agency requests, will be placed on the consent calendar for approval.

- ❖ **Certificates of Recognition/Commendations:** Commendations/Certificates of Recognition are acknowledgements of the activities of a person or organization, issued by the Mayor or by all Councilmembers without formal action being taken. Commendations/Certificates of Recognition typically acknowledge exceptional endeavors or are given to departing Board and Commission members and/or Councilmembers and are presented at an appropriate function or Council meeting. Councilmembers may request a certificate of recognition for a particular cause, organization, person, or event happening in their respective districts.
- ❖ **Ordinances:** Legislative acts of the City Council are known as ordinances. Ordinances may be general or special, depending upon their effect. Those that relate to the health, safety, and welfare of the community and are intended for long-term application throughout the city are known as general ordinances. Special ordinances are those with limited application. General ordinances are codified in the South San Francisco Municipal Code. Subject to certain state law exceptions, most ordinances are introduced at one meeting and are adopted by majority vote at a subsequent meeting.

An ordinance is necessary (1) when state law requires a regulation to be adopted by ordinance, (2) to amend or repeal provisions of the Municipal Code or any uncodified ordinances, and (3) to impose regulations on persons or property which impose a penalty by fine, imprisonment, or forfeiture for the violation.

Ordinances shall be prepared by the City Attorney. Ordinances are prepared for presentation to the Council when ordered by a majority vote of the Council, or when requested by the Mayor or the City Manager, or when prepared on the City Attorney's own initiative.

- ❖ **Resolutions:** Resolutions are Council actions that become effective upon adoption and encompass the business not addressed through ordinances. They are typically used to handle routine business and administrative matters requiring some type of formal memorialization. Resolutions are used for various reasons, such as when specifically required by law, when needed as a separate evidentiary document to be transmitted to another agency, or where the frequency of future reference back to its contents warrants a separate document to facilitate reference and research.

- ❖ **Motions:** The least formal of Council actions, motions, typically are used for procedural matters (such as to continue items) or for administrative matters (such as to accept reports). An adopted motion is as legally effective and binding as an adopted resolution but generally is recorded simply as an item entry in the minutes.
- ❖ **Minute Orders:** A minute order is a brief notice documenting an action taken by the Council and distributed subsequent to the meeting at which the action is taken. The minute orders shall be delivered by the City Manager’s office via electronic form to all residents and posted outside of City Hall. The City Manager will consult with the City Clerk and Communications Manager to ensure consistency and factual information and votes/motions from the meeting are recorded and publicly shared.
- ❖ **Public Hearings:** By their nature, all hearings (except personnel matters) are public. The Council has the prerogative of conducting a public hearing on any item on its agenda, whether or not the matter has had formal notice as a public hearing. Certain matters are formally noticed in advance as public hearings, pursuant to various provisions of state law. Unless otherwise specifically required by federal, state or local law, all public hearing dates and times are set administratively.
  - Public hearings tend to be of two types: **legislative or quasi-judicial**.
    - **Legislative hearings** generally result in the adoption of policy or regulation.
    - **Quasi-judicial** hearings are those in which the Council applies existing laws (State and/or local) to a particular project or action. For example, an application for a variance or conditional use permit would involve a quasi-judicial hearing. Quasi-judicial hearings are also occasionally referred to as an adjudicatory hearing. In a quasi-judicial hearing, the Council will often make findings based on the facts presented to the Council.

Formally noticed public hearings are generally conducted in the following format:

- Public Hearing opened by presiding officer.
- Staff presentation.
- Questions to staff by Council.
- Comments from the public.
- Public Hearing closed by presiding officer.
- Questions by Council.
- Discussion by Council.
- Action by Council.

The **presiding officer** conducts the hearing in such a manner as to provide for freedom of speech and expression of opinion, subject to the limits of courtesy and respect for others. Comments and questions from the public are limited to the subject under consideration. Depending on the agenda and the number of speakers on an issue, the presiding officer may limit a speaker's time. This should also consider the number of public members joining virtually to speak remotely. Any person speaking may be questioned by members of the City Council.

In those instances where there is a specific applicant for a matter which is the subject of a public hearing, the applicant is entitled to make a presentation at the commencement of the public hearing and also is entitled to make any concluding remarks just prior to closure of the public hearing. Councilmembers should not speak on an issue until the public hearing has been closed and public comment has been received or read. Once a hearing is closed, it is inappropriate for the public to speak except to answer an inquiry of a Councilmember, as addressed through the chair.

When the Council conducts a quasi-judicial hearing, particularly when it is hearing an appeal of a decision by a Board or Commission, on a case-by-case basis, the City Attorney determines if alternate hearing procedures are necessary and advises the City Council accordingly.

All persons interested in the matter which is the subject of a hearing are entitled to submit written or photographic evidence relevant to the issue for consideration by the Council, in addition to or in lieu of any oral evidence. The Council determines relevancy. If the Council feels that the material is relevant but that, due to its quantity or complexity, there is insufficient time to fully review it, the hearing may be recessed or continued. All evidence considered by the Council in reaching its decision must be retained by the City as part of the record, as a supplement to but not as a part of the minutes. The Council retains the discretion to accept or to reject new documentation furnished on the night of the Council meeting.

Advocates of a matter before the City Council who furnish documentation on the night of the Council meeting are expected to furnish sufficient copies for the City Council, City Clerk, and City Manager. Failure to do so will cause the Council to reject consideration of such information or cause the item to be continued.

**If a Councilmember has met with a proponent or opponent of a matter that is the subject of a hearing, that meeting should be acknowledged during the meeting on the record prior to the opening of the hearing at the Council meeting.**

**Council Discussions:** To assist the City Council in the development of a structure for orderly discussion of items, rules have been prepared that represent accepted practices for the management of City Council meetings.

- 1. Obtaining the floor.** A member of the City Council or staff shall first address the Mayor to gain recognition. Comments and questions should be limited to the issue before the Council. **Cross-exchange between Councilmembers and public should be avoided.**
- 2. Questions to Staff.** A Councilmember shall, after recognition by the Mayor, address questions to the Department Director or designated staff member. If a Councilmember has questions on an agenda item, that member should make every reasonable effort to express and share those questions to the City Manager and with their knowledge, contact staff prior to the meeting in order to allow staff time to research a response/answer for the meeting. If staff answers a written question from a Councilmember about an item on the agenda via written form, that response should be copied to all other Councilmembers.

3. **Interruptions.** Once a Councilmember has the floor, other Councilmembers may not interrupt except to make a point of order or point of personal privilege. The public may not interrupt or interfere with a councilmember's comments.
4. **Discussion Limit.** A Councilmember should not speak more than once on a particular subject until every other Councilmember has had the opportunity to speak, unless that item is of high concern to the district that councilmember represents.
5. **Tabling Procedure** Tabling an item immediately stops discussion and causes a motion and a vote to postpone a matter indefinitely or to a time and date certain. This requires the majority vote of Councilmembers.
6. **Right of protest.** A Councilmember is not required to state reasons for a dissenting vote.
7. **Calling for the question.** The purpose of calling for the question is to disallow further debate and put an issue to an immediate vote. A Councilmember may move to "call for the question" on an item which is being considered. The motion requires a second, is not debatable, and must pass by a four-fifths vote. If the motion carries, the item is no longer debatable, and no further action or public comment may be taken, and the City Council must vote on it.

**Finality of Administrative Actions:** For the purpose of judicial review, all administrative actions by the City Council become final on the date taken, except where (1) state or local law provides that the action becomes final on a later date; or (2) a request for reconsideration is made in a timely fashion.

#### **Introduction of Items After 11:00 PM**

The City Council makes every effort to end its meetings before 11:00 p.m. **The Council also will not take up new matters after 11:00 p.m., unless a majority of the Council votes to extend the meeting to discuss specified items, including Closed Session matters. The motion to extend the meeting shall include the list of items to be discussed by the City Council.** The meeting shall continue only on the matter being discussed, and the remaining items on the agenda shall be carried over unless the Council votes. The Mayor may ask the City Manager to identify any time-sensitive matters that need to be addressed by the council and shall prioritize those items over any others that warrant a lengthier or more substantive discussion.

The City Council will endeavor to conclude its remaining business that evening in an expeditious manner by continuing all other items of anything other than a routine nature.

#### **Absences**

Councilmembers are strongly encouraged to attend meetings in person. Whenever a Councilmember knows in advance that he or she will be absent from a Council meeting, it is the responsibility of that member to notify the City Manager and City Clerk as soon as possible of the impending absence. California Government Code Section 36513 provides that if a Councilmember is absent from all regular City Council meetings without permission for sixty (60) days consecutively from the last regular meeting attended, (or seventy (70) days if the Council meets once a month), the seat held by that Councilmember becomes vacant. The law is silent about the basis for granting or denying permission to be absent. Such a determination is left to the Council as a whole.

## **Remote Attendance**

State law allows Councilmembers to attend meetings remotely by following the procedures outlined in Government Code Section 54953(b) (“Standard Remote Attendance”) or the procedures outlined in Government Code Section 54953.8 (“Just Cause Remote Attendance”). For convenience, these procedures are summarized below and are current as of the date of Handbook revision. If state law is subsequently amended, the amended terms of State law will apply.

**Standard Remote Attendance Guidelines:** A councilmember participating remotely, following the guidelines, must ensure that:

- a) At **least five days** advance written notice from the publication of the agenda must be given by the Councilmember to the **City Clerk’s office** and **City Manager’s Office** about their intent to participate remotely; the notice must include the address at which the remote attendance will occur, and the address the Council packet should be mailed to if a hard copy is requested.
- b) The Councilmember is responsible for posting the Council agenda in the remote location, or having the agenda posted by somebody at the location and confirming that posting has occurred. The City Clerk will assist, if necessary, by emailing, faxing or mailing the agenda to whatever address or fax number the Councilmember requests; however, it is the Councilmember’s responsibility to ensure that the agenda arrives and is posted. If the Councilmember needs assistance of the City Clerk in delivery of the agenda, the fax number or address must be included in the five-day advance written notice above.
- c) The Councilmember must ensure that the location will be publicly accessible while the meeting is in progress.
- d) The Councilmember must state at the beginning of the Council meeting that the posting requirement was met at the location and that the location is publicly accessible and must describe the location.

**Standard Remote Attendance Procedures:** A Councilmember attending remotely using these procedures must ensure that:

- a) The meeting agenda identifies the remote attendance location and is posted at that location in an area that is accessible and visible 24 hours a day for at least 72 hours prior to a regular meeting and 24 hours prior to a special meeting.
- b) The remote attendance location is open and fully accessible to the public, and fully accessible under the Americans with Disabilities Act, throughout the entire meeting. These requirements apply to private residences, hotel rooms, and similar facilities, all of which must remain fully open and accessible throughout the meeting, without requiring identification or registration.
- c) Members of the public who attend the meeting at the remote attendance location have the same opportunity to address the Council from the remote location that they would if they were present in Council Chambers.
- d) The remote attendance location must not require an admission fee or any payment for attendance.
- e) If the meeting includes a closed session, the Councilmember must ensure that there is a private location available for that portion of the meeting. A private location means a closed room such that no other person can hear any portion of the closed session.
- f) All votes must be by roll call.
- g) At least a quorum of the City Council must attend the meeting from locations within the City, but they are not required to be at the same location.

### **Just Cause Remote Attendance Procedures**

In 2022, the Legislature adopted AB 2449, which amended the Brown Act to allow remote participation in certain narrow circumstances without publishing the remote location on the meeting agenda and without providing public access from the remote location. In 2025, the Legislature adopted SB 707, which further amended the Brown Act, including amendments to remote participation procedures.

A Councilmember may use Just Cause Remote Attendance, without the need to post the address of their location or allow the public to attend from that location, if the Councilmember has “**just cause**” that requires remote participation, as defined by Government Code Section 54953.8.

### **Just Cause is defined and limited to one or more of the following:**

- (a) Childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation. (Section 54953.8.3(c)(1).)
- (b) A contagious illness that prevents a member from attending in person. (Section 54953.8.3(c)(2).)
- (c) A need related to a physical or mental condition for which a reasonable accommodation is not being provided. (Section 54953.8.3(c)(3).)
- (d) Travel while on official business of the legislative body or another state or local agency. (Section 54953.8.3(c)(4).)
- (e) An immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner of the member that requires the member to participate remotely. (Section 54953.8.3(c)(5).)
- (f) A physical or family medical emergency that prevents a member from attending in person. (Section 54953.8.3(c)(6).)
- (g) Military service obligations that result in a member being unable to attend in person because they are serving under official written orders for active duty, drill, annual training, or any other duty required as a member of the California National Guard or a United States Military Reserve organization that requires the member to be at least 50 miles outside the boundaries of the local agency. (Section 54953.8.3(c)(7).)

**Limitations:** Each Council member may appear remotely for “just cause” for a maximum of five meetings per year.

**Notice:** A Councilmember with “just cause” to attend remotely must notify the Council or Council committee and the City Clerk at the earliest possible opportunity, including at the start of the meeting, of their need to participate remotely, including a general description of the “just cause.”

**Disclosures:** Under Just Cause Remote Attendance, Councilmembers attending remotely must publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member’s relationship with the individual.

**Technology:** Councilmembers attending remotely shall participate using both audio and visual technology. The technology must provide either (A) a two-way audiovisual platform available to the public, or (B) a two-way telephonic service and a live webcasting available to the public.

**Quorum:** At least a quorum of the Council must participate in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the City.

**Votes:** All votes must be by **roll call**.

**Agenda:** The agenda and all notices issued that relate to the meeting must include how members of the public may remotely access the meeting and offer public comment.

**Disruption:** If a disruption occurs that prevents members of the public from offering public comments or attending the meeting through the two-way audiovisual platform, or the two-way telephonic service and a live webcasting of the meeting, the Council may not take any other action on agenda items until public access to the meeting is restored.

**Public Comments:** The Council may not require public comments to be submitted in advance of the remote meeting and must provide an opportunity for the public to address the Council and offer comment in real time.

If the Councilmember intends to follow Just Cause Remote Attendance and determines that any or all of these requirements cannot be met, they shall not participate in the meeting remotely using Just Cause Remote Attendance procedures.

### **Additional Notable Changes**

1. **Accessibility and Hybrid Meeting Requirements:** Beginning July 1, 2026, SB 707 requires eligible legislative bodies (such as the City Council) to offer remote public access via two-way audio or audiovisual platforms for every meeting of the legislative body and to provide multilingual outreach, translated agendas, and accessible online information. It also mandates policies to address technology disruptions and assist interpretation needs.

2. **Disability Accommodations for Members:** SB 707 codifies that legislative body members with qualifying disabilities may participate remotely as a reasonable accommodation under applicable law, with conditions for audio/visual participation and disclosure of others present at the remote location. Remote participation under this accommodation counts as in-person attendance for quorum purposes.

3. **Special Meeting and Disruption Provisions:** SB 707 expands special meeting posting requirements and clarifies authority to remove or limit participation by disruptive individuals, including those attending via remote platforms.

## CHAPTER IV - PROCEDURAL RULES

### Brown Act

The Brown Act (Government Code Section 54950 et seq.), authored by Assemblyman Ralph D. Brown in 1953, focuses on keeping the public business in the public's eye and governs many of the processes that must be followed with regard to notices, agendas, and the conduct of meetings. It attempts to strike a balance between public access to the activities of a public body and the need for candor, debate and information gathering.

### *Appendix L: A Guide to the Ralph M. Brown Act*

With few exceptions, the law provides that all the deliberative processes be open and available for public scrutiny. It defines meetings broadly as a gathering of a quorum where business is discussed or transacted. An informal gathering, such as a social event, is not a meeting unless official business is discussed. Among Councilmembers, a series of telephone calls, emails, texts, a virtual meeting, a conference call, mass emailing or texting or any other informal session in which substantive matters are discussed, may constitute a meeting under the Act. A series of telephone calls, emails or texts, either by one Councilmember to all of the others or one by each Councilmember as a link in a chain may be determined to be a meeting if substantive matters are discussed.

As part of the notice requirements, the Brown Act requires the posting of an agenda, at least seventy-two (72) hours prior to a regular meeting, containing a brief general description of each item of business to be transacted. As of January 1, 2019, Assembly Bill 2257 ("AB 2257") requires online posting of an agenda for a meeting. No action may be taken on any item not appearing on the posted agenda. "Action taken" is defined as a vote, collective decision, commitment or promise by a majority of the body. According to the Attorney General, an item which is merely discussed, with no decision as to how the matter should be resolved, would not constitute taking action. Similarly, brief discussions of procedural or preliminary matters which are not substantive in nature (e.g., instruction to staff to report back, scheduling of meetings and items) are not prohibited. A standing committee of the City Council is also subject to the Brown Act notice requirements.

There are several exceptions to the agenda requirement.

- ◆ First, action may be taken on a matter determined to be an emergency.
- ◆ Second, if at least two-thirds of the Councilmembers (i.e., effectively four members) approve, an item may be included on the agenda if the need to take action arose after the agenda was posted. Or, if less than two-thirds of the Councilmembers are present, a unanimous vote of those present is needed to include the item that requires immediate action.
- ◆ Third, action may be taken on an item which was previously posted in connection with a meeting which occurred no more than five (5) days prior, provided the prior meeting was adjourned to the new date.

Under the Brown Act, the Mayor or three members of the City Council may call a **Special meeting** by providing **twenty-four (24)-hour advance notice** to all the Councilmembers and to all media representatives who have requested notice in writing. The notice may be delivered personally or by any other means. The notice must state the time, place, and business to be transacted with an opportunity for the public to address the Council on that item. The notice must be posted in a public and freely accessible location. No other business may be considered at a special meeting.

**Emergency meetings** may be held if there is a work stoppage or other activity which severely impairs public health, safety or both, and if there is a crippling disaster. **Twenty-four (24)-hour notice** and posting is not required in such situations; however, newspapers, radio and television stations must be notified at least one (1) hour prior to the meeting if telephone service is still available.

**Closed sessions** are the only part of a Council meeting that the public cannot attend, though the public may make a public comment(s) before the start of the closed session. The Council will make a public report after the session where required by State or local law. Closed sessions are permitted in a limited number of instances, subject to specific rules and regulations. Though closed sessions are permitted, they must be included on the regular or special meeting agenda with a brief description of the matters to be discussed. Specific language to describe the actions to be discussed is statutorily defined and, when used, ensures compliance with the Brown Act. (See Government Code Sections 54954.5; 54956 et. seq.; 54957 et. seq.) Closed session may not occur in an “emergency meeting” unless agreed to by a two-thirds vote of the Councilmembers present (i.e., four members), or, by a unanimous vote if less than two-thirds of the Councilmembers are present. (Gov. Code § 54956.5(c)).

A summary listing of permitted closed session items under the Brown Act includes:

1. License applicants with criminal records
2. Real Estate Negotiation
3. Conference with Legal Counsel on Initiation of Existing and Anticipated Litigation
4. Liability Claims
5. Threats to Public Services or Facilities (public security)
6. Personnel Matters (public employee appointment, termination, discipline, etc.)
7. Labor Negotiations

The Brown Act requires disclosure of certain items decided in closed-session meetings. Minutes may be taken during a closed session, but they are not considered part of the public record. If there is an approval of agreements concluding real estate negotiations and the City finalizes the agreement, the report given in open session, during the same meeting, must include the approval action taken, a voting tally and the substance of the agreement. If the other party finalizes the agreement, it must include the same information but is given as soon as the other party informs the City of its approval.

In an approval of a litigation defense, appellate review or amicus curiae participation, the report must include the approval action, adverse parties (when known), litigation substance and the voting tally. The approval is reported in open session, during the same meeting. If approval to initiate or intervene in litigation is granted, the report given in open session during the same meeting must include the decision to take action and intended action to be taken. After the action has started and if the disclosure does not jeopardize the City’s legal position the disclosure given only upon inquiry, must include the approval action, the voting tally, defendant(s) and the substance of the litigation. If the City’s ability to affect service or to conclude existing settlement negotiations would be compromised by disclosure, the City does not have to do so until the conclusion of the matter. When the matter is concluded, the City must disclose, only upon inquiry, the same as above.

When pending litigation settlements are approved, if the City finalizes a signed settlement offer, the report given in the open session, during the same meeting, must include the acceptance action, the voting tally, and the substance of the agreement. If the other party or a court must finalize the agreement, the disclosure occurs when the settlement is finalized, and includes the same information.

With a disposition of Joint Powers Agency claims, the report includes a voting tally, the name of the claimant, the name of the local agency claimed against, the substance of the claim and the monetary amount approved for payment (if any). The report is made as soon as the disposition is reached.

For actions affecting the employment status of public employees, twenty-four (24) hours before the meeting the employee must be informed of the charges, and of the right to hear the charges in an open session. When a decision is reached in closed session, the report must include action taken that affects the employment status, the voting tally and the title of the position. If the action taken is a dismissal or a nonrenewal of a contract, the report will be deferred until the employee has an opportunity to exhaust all administrative remedies. Otherwise, the report will be given in the open session, during the same meeting.

For agreements concluding labor negotiations, the report is required after the agreement is finalized and ratified. The report must include the item approved, the voting tally, and the other party. Effective January 1, 2014, California Senate Bill 751 amended the Brown Act to require that all legislative bodies “publicly report” any “action taken” and the vote or abstention on that action of each member present for the action. “Action taken” is defined in the Brown Act as a collective decision made by a majority of the members of a legislative body upon a motion, proposal, resolution, order, or ordinance. The Brown Act previously required legislative bodies to report certain actions taken in closed session. Now, those reporting requirements will extend to actions taken by legislative bodies in open session.

Violation of the provisions of the Brown Act can result in criminal penalties, the imposition of civil remedies, and the award of attorney's fees. Attendance at a meeting at which a violation occurs and action is taken when there is knowledge by the official that a violation is occurring, can result in misdemeanor liability. The available civil remedies are injunction, mandamus or declaratory relief, as well as allowing recordings of closed sessions. The remedies are designed to prevent further or future violations and do not require knowledge or action to be taken. Before a suit can be initiated, however, the complainant must make a written demand to the City Council to correct or cure the violation, and the Council must fail to do so.

No person in attendance at a Closed Session may disclose the substance or effect of any matter discussed during the session, except to the extent authorized by a majority vote of the Council or as required by a court. An action taken by the Council during the time of alleged Brown Act violations is not automatically null and void. If the actions were in "substantial compliance" with the law, or if they related to the sale of bonds or the issuance of contracts, those actions would still be valid.

If a violation is found and attorney's fees are awarded, the award is against the city and not against the individuals who violated the law. If someone brings an action against the city and the City prevails or the action is determined to be frivolous and without merit, the City may be awarded its attorney's fees.

### **Rosenberg's Rules of Order**

Rules adopted to expedite the conduct of business in an orderly fashion are procedural only. The failure to observe a procedural rule does not affect the jurisdiction of the Council or invalidate any action taken at a meeting that is otherwise held in conformance with the law. Rosenberg's Rules of Order is a simplified set of parliamentary rules widely used in California. <https://www.calcities.org/resource/rosenberg's-rules-of-order-simple-rules-of-parliamentary-procedure-for-the-21st-century>

Procedural matters not otherwise covered by either city ordinance, city resolution, state law, or this handbook are handled in accordance with Rosenberg's Rules of Order. No provision in Rosenberg's Rules is to be construed to supersede any procedure adopted by the City Council or required by state law.

It is recognized that Rosenberg's Rules apply to deliberative assemblies, but that the City Council also functions as a quasi-judicial body. Due process considerations impose certain procedural requirements and are sometimes different than the provisions of Rosenberg's Rules. For example, a City Council cannot reconsider or rescind a quasi-judicial decision after the decision is final, in the absence of statutory authority to the contrary. In addition, the Government Code sometimes imposes specific rules, such as providing that the chair does participate in debate. (Section 36803).

### **Basic Procedures - Main Motion**

In conjunction with the agenda for a Council meeting, business is brought before the City Council by the motion of a member. A motion may itself bring a subject to the City Council's attention or it may follow the presentation of a report or other communication. A motion is a formal proposal that the City Council take certain action.

The proposed action may be of a substantive nature, or it may consist in expressing a certain view, or directing a specific investigation and reporting back, or the like. The basic form of motion, the form which brings business forward, is known as a "main motion". The main motion sets a pattern from which all other motions are derived.

The steps by which a motion is normally processed are:

- (1) a member makes (or moves or offers) a motion,
- (2) another member seconds the motion and
- (3) The chair states the motion.

After a main motion is made and before the question is stated by the chair, any member can informally suggest one or more modifications in the motion, which the member can accept or reject. Once stated, the motion is pending and open for discussion/debate. The chair then puts the matter to a vote and announces the result. If the Council decides to do what a motion proposes, it adopts the motion; if the decision is against what the motion proposes, the motion is rejected.

## **Voting**

Votes are taken by voice or roll call and entered in full upon the record. During the roll call, it is not in order for any member to explain a vote.

**Silence constitutes an abstention vote.** Councilmembers who are silent during voting shall have their vote recorded as abstaining. Abstention votes on a motion will not be counted. **When a Councilmember recuses themselves to comply with the Political Reform Act and Fair Political Practices Commission regulations, and they leave a meeting, they will be counted as absent.**

When a Councilmember recuses themselves for other reasons where they are not legally required to do so, their recusal will be treated as an abstention. In which case, a stated reason as to the recusal should be provided. Consistent with Rosenberg's Rules, the present and voting rules will be used for abstentions. It is the responsibility of every Councilmember to vote unless disqualified. When someone chooses not to vote, the person in effect "consents" that a majority of the Councilmembers present may act for him or her. A Councilmember may change a vote or withdraw an abstention and vote if a timely request to do so is made immediately following the announcement of the vote and before the next item in the order of business is taken up.

Except for quasi-judicial matters, at the next regular meeting after a vote, a Councilmember may request that an item be agendaized at a subsequent meeting for reconsideration.

- If a majority of the Council votes affirmatively to reconsider the item, it will be scheduled for a future meeting.
- Any Councilmember may change their vote as part of the reconsideration.

**Disqualification and recusal of a vote.** A Councilmember disqualified because of any financial interest or other interest proscribed by law, may not participate in the discussion or the vote.

**Tie Votes.** Tie votes are lost motions. Tie votes may be reconsidered on motion by any member of the Council voting aye or nay during the original vote. Before a motion is made on the next item on the agenda, any member of the Council may make a motion to continue the matter with another date. Any such continuance suspends the running of any time in which action of the City Council is required by law. Any Councilmember may place on an agenda for a subsequent meeting a matter which resulted in a tie vote. When less than all Councilmembers are present and a matter under discussion remains unresolved as the result of a tie vote on all motions made on such matter, the matter is automatically continued to the next Council meeting.

**Voting requirements for specific actions.** Certain actions require a minimum number of affirmative votes for approval. These include:

1. Approval of a general plan or specific plan amendment – 3 Affirmative Votes
2. Approval of a Resolution of Necessity – 4 Affirmative Votes
3. Approval of an ordinance or expenditure of funds – 3 Affirmative Votes
4. Approval of an urgency ordinance – 4 Affirmative Votes
5. Approval of a general tax – 4 Affirmative Votes plus Majority Voter Approval
6. Approval of a new member of council, either by appointment or the call of a special election to elect a new member. – 3 Affirmative Votes

### **Request for Agenda Items, Ordinances, or Legal Opinions**

To ensure all Councilmembers' views are represented, council agendas contain sections titled "Council Comments/ Requests" and "Items from Council – Committee Reports and Announcements". This portion of the meeting allows any Councilmember to request an agenda item for a future meeting and allows the City Council to have a short discussion on the request (but not on the substance of the item).

Any request must include an explanation of the issue and the goal of the proposed Council discussion. If there is no dissenting or opposing articulated action from a majority of the Councilmembers when the support for the request at that time is made, then the item shall be placed on a future agenda. Upon support for the request, the Councilmember may suggest and provide direction to the City Manager and staff on information that is desired to be presented and when the item is placed on a future agenda.

Requests by Councilmembers to have items included on the agenda should be made to the City Manager. Any Councilmember may request the City Manager or the City Attorney to prepare a proposed ordinance. Any Councilmember may request a written legal opinion from the City Attorney directly or may make the request through the City Manager.

All proposed ordinances or written legal opinions will be distributed to all members of the Council so that all Councilmembers may be fully informed of city matters. *A Councilmember with a conflict of interest on a particular issue shall not be provided with a copy of the opinion or ordinance.*

### **Public Participation**

It is acknowledged that individuals may wish to address the Council under "Public Comments" for the purpose of obtaining general information or receiving responses to specific questions. State law prevents the Council from responding to public comments or acting on matters not on the agenda. In general, the mayor shall ascertain whether the Council or staff is able to provide the requested information immediately. If this is not possible because the information is not readily available, the matter may be referred to staff for a written response. Unless the matter raises issues of an extraordinary nature, it is expected that a response will be presented to the Council at its next regular meeting. If it is not possible to do so by this date, the Council will be advised as to when a response will be forthcoming.

Members of the public are not required to identify themselves, but it helps ensure accurate record-keeping of public comments. The public should not ask direct questions to city staff, City Manager, City Attorney, or other non-elected or appointed members of the council, but should address their comments to the **City Council only**. Staff may be provided the opportunity to present a summary of each staff report, and will be available to answer questions from Council members, but not from members of the public or groups of persons.

Members of the public will be afforded the opportunity to speak on all items under the subject matter jurisdiction of the City Council. Under the Public Comment section of the agenda, members of the public may speak on any item **not listed** on the Agenda and on items listed under the **Consent Calendar**. Individuals may not share. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special

circumstances exist. **In instances where there is a technical or audio issue, the clock will be reset to allow for total time without interruption.**

Individuals speaking under “Public Comments” generally are limited to three (3) minutes. In accordance with the Ralph M. Brown Act, including the public comment provisions of California Government Code § 54954.3(b)(1), the City Council may establish reasonable regulations governing public participation during Council meetings, including limits on the total amount of time allocated for public testimony and the time provided to individual speakers. To ensure fair and orderly proceedings, the mayor or presiding officer may adjust individual speaking time based on factors such as the number of speakers wishing to address the Council, the number and complexity of agenda items, and the overall time available during the meeting. The mayor, or presiding officer, retains discretion to implement these adjustments in order to provide an equitable opportunity for public comment while maintaining the efficient conduct of Council business. Speakers that are not in compliance with the City Council's rules of decorum will be muted. **Speakers may not assign unused time to other speakers.**

**Below is guidance of speaker time limits, subject to change by the Mayor or presiding officer:**

#### **Speaker Time Limits**

<b>Number of Speakers</b>	<b>Speaker Time</b>
1 -10 Speakers	3 minutes per speaker
11 -20 speakers	2 minutes per speaker
21 + speakers	1 minute per speaker

During special or study session meetings, the public may address the City Council only on matters listed for discussion on the agenda. For meetings at which public comments may be provided via Zoom or another two-way teleconference platform, the City Clerk, or designee, will first call on the members of the public at the in-person meeting location. Following the conclusion of those comments, members of the public participating remotely who have expressed interest in providing public comment by raising a “**virtual hand**”, will be allowed to speak. Members of the public who provide comments virtually shall be given the same amount of time as members of the public who attend a meeting in person.

**Written communication:** Members of the public are encouraged to submit written comments via the eComment portal on the city’s website. Do not include any personal or private information in written communications to the City Council that you do not wish to make public, as written communications are considered public records and will be made publicly available on the city website.

Please note that members of the public may not place any documents on the Councilmember’s seats at the dais before the start of the meeting. If a member of the public wishes to distribute correspondence on the night of the meeting, they may do so. However, these documents should be directed to the City Clerk or designee, who will distribute them to the Council. Speakers **cannot** use the city’s or their personal computer or projection equipment for displaying presentation material during the meeting.

The Mayor has the authority to modify the time limits set forth above based on the agenda size and the number of speakers.

Agenda Section	Time Limits
<b>Public Communication – Public Comments</b>	A maximum of 3 minutes for each person, whether an individual or group spokesperson. <b>Total time of 30 min.</b>
	Total time allocated at the beginning of the meeting – 30 minutes
	Additional time for public comment may be allocated at the end of the meeting, at the discretion of the Mayor
	Time may be modified by the Mayor in some circumstances
Public Hearing – Order of Presentations	Time Limits
Staff presentation	As needed
Appellants ( <i>when not applicants</i> )	15 minutes
Applicants	15 minutes
Organized presentations ( <i>group spokesperson</i> )	10 minutes
Individual speakers	3 minutes
Rebuttal by applicant	5 minutes
Rebuttal by appellant	5 minutes

A final warning by the Mayor will be issued when the decided public comment time limit has been reached. The public commenter will have 10 seconds to conclude their testimony. To be fair, public comments that go beyond the ten-second time limit will be muted. All members who are muted may submit the remainder of their public comment through email to the City Council via the City Clerk.

### **Speaker Cards and Other Protocols**

If a member of the public wishes to address the City Council and are attending the meeting in person, they will be asked to complete a **digital speaker card** for the record, which includes the speaker's name, address, and other contact information, and the number of the agenda item. Submitting a public comment card is *not required* to address the City Council, but it will help the City Clerk maintain an accurate record. The digital speaker card will be made available via an electronic kiosk at the meeting location. Those attending the meeting virtually will not be required to fill out a speaker's card, but will signal their interest in speaking or providing comment by raising their "**virtual hand**". To ensure accuracy of the record, members of the public addressing City Council should speak in an audible tone of voice into the microphone. Members of the public addressing the council virtually should be aware that the clerk or their designee will unmute them when it is their turn to speak.

**One Speaker at a Time:** No person, other than the person having the floor, shall be permitted to enter into any discussion without the permission of the Mayor. All remarks should be addressed to the Council as a body and not to any individual member. No question is to be asked of a Councilmember or any city staff member or consultant.

### **Addressing the Council during Council Deliberations**

Council deliberations are defined as the time when the City Council has heard staff or consultant presentation, has allowed time for public comment and has then proceeded to discuss and deliberate the item amongst themselves prior to a motion or vote. No person may address the City Council following the time for public comment, and during City Council deliberations, this includes during or after a presentation, unless a majority of the City Council agrees or in answer to a specific question directed to the individual by a member of the City Council.

### **Failure to Speak**

Any failure of a member of the public to request to speak on an item, or any failure by the City Council to afford an opportunity to speak on an item, shall not affect the City Council's right to act on that item or the validity of any action subsequently taken by the City Council.

### **Councilmember Participation**

Every Councilmember desiring to speak addresses the chair, and upon recognition by the presiding officer, may speak on the matter before the Council. A member, once recognized, shall not be interrupted when speaking unless it is to call the person to order. If a member, while speaking, is called to order, the member shall cease speaking until the question of order has been determined, and, if in order, the member shall be permitted to proceed. Questions of staff should be directed through the chair.

### **Assembly Bill (AB) 1787 Public Comments (Translation)**

In compliance with Assembly Bill 1787 (“AB 1787”), which requires local agencies to provide at least twice the allotted time for public comment to speakers who require translation services. When a member of the public is addressing the Council or one of its Committees, and when time limits have been placed on public comments, the Mayor or Vice-Mayor, shall allow persons requesting interpretation assistance, by another individual, to testify for twice the amount of the time limit, thereby providing uniform time for the speaker’s testimony, as well as the time necessary for the interpretation of the testimony for the benefit of the Council and the public.

### **Meetings – Video Streamed and Broadcast**

All Regular City Council meetings held in the City Council Chamber or via virtual platforms are broadcast live and rebroadcast on the City’s government access channel, web-streamed on the City’s website, and digitally archived. The recordings of the City Council meetings **are not** the official record of those meetings. The minutes are the only official record. City Council meeting recordings shall be designated as permanent records and archived indefinitely to support historical preservation and ensure continued transparency.

### **Minutes**

Minutes serve as an accurate record of **decisions** made during a meeting. It is not necessary for minutes to recount the discussion or public comments received. However, it is sometimes helpful to record the names of public speakers, but not necessarily a complete description of their comments. The City Clerk shall prepare action minutes that will include each speaker’s name and the agenda item or topic addressed, with reference to the meeting audio recording on the City’s website for full context.

Meeting minutes are required to include the following information:

- Members present;
- Key issues discussed;
- Motions, resolutions, ordinances, and other items of business and their disposition; and
- Results of all votes and, in the case of a roll call vote, the vote of each member by name.

According to the minimum standards for a Brown Act meeting, it is essential to record the motion, the individual who made it, the person who seconded the motion, and the votes taken on any action items listed on the agenda. If any members are participating remotely, the minutes should record the specific legal basis for their participation.

Councilmembers may request revisions to the minutes, subject to a majority vote of the City Council. Councilmembers having only typographical corrections to minutes are encouraged to provide such corrections to the City Clerk directly and need not wait to submit such corrections at a meeting. To make amendments to the minutes of a City Council meeting, a Councilmember should notify the City Clerk in writing of the proposed changes in advance of the meeting. In doing so, this will allow the City Clerk to prepare an amended set of minutes for distribution either prior to or during the City Council meeting.

Once the minutes are approved by the City Council, the Mayor and City Clerk will sign the minutes verifying their accuracy. The City Clerk will maintain the minute archives.

## **CHAPTER V – CITY COUNCIL MEETING DECORUM**

### **Decorum**

The City of South San Francisco strongly denounces hate speech and does not tolerate disruptive behavior in meetings. The City of South San Francisco prides itself on the rich diversity of its residents. The City Council is committed to creating a culture of belonging where members of the community feel included, safe, and respected. Members of the public are asked to refrain from making disrespectful and hateful comments.

Councilmembers shall accord the utmost courtesy to each other, City employees, and the public appearing before the City Council, and shall refrain at all times from rude and derogatory remarks, public criticism of staff, remarks as to integrity, abusive comments, and statements as to motives and personalities. Employees of the City shall observe the same rules of order and decorum applicable to the City Council.

While the Council is in session, the Councilmembers must preserve order and decorum, and no Councilmember should, by conversation or otherwise, delay or interrupt the proceedings or the peace of the Council, nor disturb any Councilmember while speaking, or refuse to obey the orders of the Council or other presiding officer. Unless that Councilmember is calling a point of order on the speaking councilmember.

To assist the City Council in working with a wide variety of backgrounds, personalities, opinions, values, and goals, additional protocols are outlined below:

1. Use Formal Titles. Councilmembers should refer to one another formally during public meetings as “Mayor,” “Vice Mayor,” or “Councilmember,” followed by the individual’s last name.
2. Technology. All Brown Act rules should be followed regarding technology devices. However, during hybrid meetings, Councilmembers may use their devices to assist them.
3. Practice civility, respect, and decorum in discussions and debates.
4. Honor the role of the Mayor in maintaining order.
5. Do not demean, embarrass, or speak down to city staff or senior management members.

The United States Constitution and the California Constitution protect individuals’ rights to free speech and expression. Accordingly, the city can only remove an individual if they are disrupting a meeting.

As defined in Government Code section 54957.95(b), “disruption” means engaging in behavior during a meeting of the City Council that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:

- A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law.
- Engaging in behavior that constitutes use of force or a true threat of force. “True threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

By way of example only, the City Council finds that the following are examples of prohibited disruptive behavior within the meaning of section 54957.95(b):

- shouting, making disruptive noises, such as boos or hisses
- creating or participating in a physical disturbance
- speaking out of turn or in violation of applicable rules
- preventing or attempting to prevent others who have the floor from speaking
- preventing others from observing the meeting
- approaching the City Council dais or speaker podium without consent
- refusing to obey the lawful and reason orders of the Mayor or Council.

Speakers are to address their comments to the City Council from the lectern. Each person addressing the City Council shall do so in an orderly manner and shall not engage in conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of the City Council meeting. Staff shall only respond to public comment or inquiry if requested to do so by the Mayor. Any person, who so disrupts the meeting shall, at the discretion of the Mayor or a majority of the City Council, be subject to removal from that meeting. Any speaker who violates the rules of order and decorum and who fails to heed a warning from the Mayor or law enforcement official will be escorted out of the City Council Chamber and may be placed under arrest.

The City Council finds that continued use of loud, threatening, profane, or abusive language or verbal conduct that denigrates an individual because of their race, color, gender, religion, sexual orientation, age, national origin, disability, or other protected category after a verbal warning from the presiding officer impedes the orderly conduct of the meeting and constitutes a disruption within the meaning of Government Code section 54957.95(b). It interferes with the Council's ability to accomplish its functions in a reasonably efficient matter by causing a distraction from Council business, chilling other members of the public's participation, interfering with the ability of those present to listen and understand the business and proceedings of the Council, and may constitute or contribute to employment or other types of discrimination.

Prior to ordering the removal of the individual for disruptive conduct, the presiding officer shall issue a warning the individual that their behavior is disrupting the meeting and shall follow the procedures below if applicable.

**Warnings.** The Mayor shall ask that any person violating the rules of decorum be orderly and silent. The warning shall be in substantially the form described below. If, after receiving a clear verbal warning from the Mayor, the person persists in disrupting the meeting, the Mayor may order a brief recess of the City Council to regain order. If the person persists in disrupting the meeting, despite having been previously warned, the Mayor may order them to leave the City Council meeting. If the person does not depart the City Council Chamber on their own volition, the Mayor may order any law enforcement officer who is on duty at the meeting as Sergeant-at-Arms of the City Council to escort that person from the City Council Chamber.

If a member of the public causing a disruption is attending virtually, the City Clerk or designee will remove the individual from the virtual meeting and/or mute them.

The Mayor shall deliver the requisite warning in substantially the following form. If the member is attending remotely, the written version will also be provided in a virtual format for the individual to read clearly. It will state as follows:

*“You are hereby advised that your conduct is in violation of the Rules of Order and Decorum of the City Council and California Penal Code Section 403, and you are directed to be orderly and silent. Penal Code Section 403 states that any person who, without authority of law, willfully disturbs or breaks up a lawfully convened meeting of the City Council is guilty of a misdemeanor. Continued disruption of this City Council meeting will result in your removal from the meeting by the Sergeant-at-Arms, and you will not be permitted to return to the City Council Chamber for the duration of the meeting. In addition, any continued disruption of this meeting is grounds for your arrest and being charged with a misdemeanor. Do you understand this admonition?”*

### **Verbal Conduct Denigrating Individuals Based on a Protected Category**

When a person disrupts a meeting (within the meaning of Government Code section 54957.95(b)) by engaging in verbal conduct that denigrates an individual because of their race, color, gender, religion, sexual orientation, age, national origin, disability, or other protected category, the presiding officer shall take the following actions:

- 1) The Mayor or designee shall stop the speaker to issue a warning by reading the relevant portions of the City’s Respect in the Workplace Policy. The Mayor or designee may ask the City Clerk or other staff to mute the speaker on the teleconferencing platform provided by the City. The Mayor or designee shall state that the City does not condone comments in violation of the City’s Policy and that the speaker’s harassment is unwanted and unwelcome and disrupts the meeting by interfering with the Council’s ability to accomplish its functions in a reasonably efficient matter by causing a distraction from City business, chilling participation from other members of the public, interfering with the ability of those present to listen and understand the business and proceedings of the City, and may constitute or contribute to other forms of discrimination.
- 2) The Mayor or designee shall hold the speaker’s time and the speaker may resume speaking after the presiding officer’s warning statement, unless the speaker’s comments continue to disrupt, disturb, or impede the orderly conduct of the meeting. If the speaker continues to disrupt, disturb, or impede the orderly conduct of the meeting, the Mayor or designee may prohibit the speaker from further commenting or may order the speaker to be removed from the meeting.
- 3) After the end of the speaker’s comments, any Councilmember may make a brief response to such comments, if desired.

**Misdemeanor.** Any person who willfully disturbs or breaks up a City Council meeting may be arrested and charged with a misdemeanor, pursuant to California Penal Code Section 403.

### **Enforcement of Decorum**

The Chief of Police or the representative of the Chief of Police is the ex officio sergeant-at-arms of the Council. The ex officio sergeant-at-arms shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum in the Council Chamber. Upon instructions from the presiding officer, it shall be the duty of the sergeant-at-arms to eject any person from an in-person meeting. The Chief of Police or a representative of the Chief of Police has the additional authority to place the person under arrest, or both, in accordance with State law.

As set forth in Government Code Section 54957.9, in the event any meeting is willfully interrupted by a group of persons so as to render the orderly conduct of the meeting unfeasible, and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the presiding officer may order the meeting room cleared in-person and virtually and continue in session.

***Appendix K: Chapter 10.76 – Rules of Conduct for City Property***

**Use of Cellular Telephones and Electronic Devices**

To ensure the orderly and efficient conduct of City Council meetings while preserving public access, transparency, and participation, the following policy shall apply to in-person, hybrid, and remote meetings: All members of the public, City staff, and other individuals attending City Council meetings in person shall place cellular telephones and other electronic or telecommunications devices in silent mode prior to the start of the meeting. Use of devices for accessing meeting materials, note-taking, or recording is permitted so long as it does not disrupt proceedings. Members of the public may audio- or video-record meetings in accordance with the Brown Act, provided the recording does not cause persistent disruption.

Participants attending remotely shall conduct themselves in a manner that does not disrupt the meeting, including muting microphones when not speaking and refraining from disruptive use of audio, video, chat, or other platform features. The Mayor or designee is authorized to take reasonable and necessary actions to maintain order, including muting or removing remote participants, directing individuals to cease disruptive conduct, or requiring individuals to leave the Council Chambers if disruptions persist.

**Noise in the Lobby and Public Area**

To maintain a professional and orderly environment, excessive noise in lobbies, hallways, or other public areas that disrupts Council meetings or public participation is prohibited. Individuals creating disruptions may be asked to reduce noise, stop disruptive activity, or leave the premises if necessary.

**Crowd Control in the Council Chambers**

If the City Manager, or the City Manager's designee, anticipates in advance a crowd larger than the maximum number of attendees allowed in the City Council Chambers, there shall be appropriate crowd control measures and overflow placement of attendees.

**Smoking** In accordance with South San Francisco Municipal Code Chapter 8.50 and applicable state law, smoking is prohibited in all enclosed areas of City buildings and facilities, including Council Chambers, meeting rooms, offices, hallways, enclosed parking structures, and City vehicles. This prohibition applies to all forms of smoking, including cigarettes, cigars, pipes, and electronic smoking devices such as e-cigarettes and vaporizers. Individuals found in violation may be asked to cease smoking or leave the premises.

**Distribution of Literature and Other Materials in City Council Chambers**

Literature distribution or petition circulation is not permitted in the Council Chambers when the Council is in session or during Council meeting recess. When such activity is conducted in a place where it is legally allowed, it may not be done in a manner that blocks Councilmembers, the public or city staff or city employees from accessing a Council meeting.

## **CHAPTER VI BOARDS, COMMISSIONS AND COMMITTEES**

### **Boards, Committees, and Commissions**

Boards, Committees and Commissions (except the Housing Authority, Design Review Board, Measure W Citizens' Oversight Committee, and the San Mateo County Mosquito & Vector Control District) are established by ordinance and set forth in the Municipal Code. The purpose of Boards, Committees and Commissions is to provide advice to the City Council to aid in its decision making and to handle matters within its area of expertise. Boards, Committees and Commissions should submit their recommendations to the Council in writing. Once the Council has reached a decision after due consideration of a matter, it is inappropriate for a Board, Committee or Commission or its members to criticize verbally or written or via social media the council or attempt to change a decision made by Council.

No member of any Board, Committee, or Commission may be a member of any other advisory body or hold any paid position with the City or be an elected or appointed official of another governing body in public service, except members of the Youth Commission serving temporary intern and part-time positions. The members of each advisory body (except the Design Review Board) are appointed by the Council in accordance with governing law. Except for the Conference Center Authority, the Bicycle and Pedestrian Advisory Committee, and the Youth Commission, the Council will consider any advisory body applicant who is not a resident in the City of South San Francisco and, if applicable, a resident of a specific district.

The Board, Committee, and Commissions are authorized to appoint advisory committees to assist them in performing their duties. A member of the Board, Committee, or Commission shall be designated as chairperson of these advisory committees upon approval of the appointing Board or Commission. The advisory committees shall be assigned functions consistent with the duties of the appointing advisory bodies and shall report to at the times and in the manner which the appointing Board or Commission may require.

All appointees must comply with the appropriate provisions of law regarding disclosure of financial interests, if applicable. The City Council will not appoint any person to a Board or Commission who would have continually recurring conflicts of interest requiring abstentions, or an excessively high percentage of such situations.

### **Stipend**

All Boards, Committees, and Commission members, except members of the, Measure W Citizens' Oversight Committee, Emeritus Members, Ex Officio Members, and Council representatives to the Conference Center Authority, are compensated at a rate of \$100.00 per regular meeting. From time to time, the Council may establish non-compensated citizen committees or task forces of limited duration to focus on specific topics.

### **Reappointment Process**

The City Clerk's Office will manage the reappointment process by notifying all eligible members at least 30 days prior to their term expiration, and those members eligible to continue serving shall express their interest in continuing serving to the City Clerk. Appointments are for a single term. After consideration of the member's record (including attendance), an individual may be reappointed for a new term.

The City Clerk will share the results with the Council via Thursday memo, and the Mayor will provide direction on the reappointment process of members. The default is that currently serving advisory body members be interviewed for reappointment. However, if it is determined that an advisory body member's performance is outstanding, or that other factors necessitate keeping them in their role, then an automatic reappointment can occur with a majority vote or majority consensus of the City Council agenda item (Consent Calendar) at a regularly scheduled City Council meeting. If an advisory body member is not reappointed without interview, then the vacancy will be advertised, and candidates will be recruited for interviews.

After reappointments are complete, the City Clerk will recruit for open seats through multiple channels, including advertising, the city newsletter, the Mayor's weekly email, the website, social media, and networking lists, to present qualified candidates to the Council for consideration.

An advisory body member may continue to serve past their expiration term until reappointed or the recruitment process is completed. Any person desiring to be considered for an appointment to any of the city's advisory bodies should submit an online application.

### **Resignations**

In the event that a current advisory body member resigns, an official letter of resignation stating the date of final service must be submitted to the City Clerk's office and shared with the City Council. When a vacancy occurs, leaving an unexpired portion of the term, any appointment is for the unexpired portion of the term. The interest of the city is best served by regular participation of advisory body members.

Government Code Section 54974 provides that whenever an unscheduled vacancy occurs, a special vacancy notice shall be posted within twenty (20) days after the vacancy occurs, and that final appointment to fill such vacancy shall not be made for at least ten (10) working days after such posting. The special vacancy notice must be posted in the City Clerk's Office and the City's Internet website or at a designated public library.

### **Removal of Members**

The appointment or removal of any board or commission ("advisory body") member who is required by ordinance to be appointed by the City Council shall require the affirmative vote of a majority of the Council. Advisory body members may be removed following **three excused or two unexcused absences during a twelve-month period**. An absence is considered excused when an advisory body member notifies the secretary of the intended absence at least twenty-four (24) hours prior to the scheduled meeting time. All other absences are considered unexcused. The preceding procedures shall not apply to non-voting Emeritus Members of appointed Boards and Commissions or to city liaison committees with other governing bodies.

### **Term of Office**

Board, Committee, and Commission members are appointed to serve for one term at a time. Terms continue until a successor is appointed and qualified. The number of members, length of terms, time of appointment, and method of appointment differ. Except when appointed as a Commissioner Emeritus by the Council, no Board, Committee or Commission member may serve more than the authorized number of terms on any one Board, Committee or Commission as set forth in the Municipal Code.

Appointments to a specific Commission, Board, or Committee are limited to a maximum of three consecutive terms, except for members of the Housing Authority, Library Board, Parking Place Commission, Traffic Safety Commission, and Youth Commission (age limit specified). For purposes of calculating consecutive terms, service of at least eighteen months plus one day during a term shall be counted as a complete term; all prior continuous service of existing trustees shall be counted. Advisory body members serve staggered terms.

### **Orientation**

Each new Commissioner, Board Member, or Committee Member will have an oath administered by the City Clerk or designee before attending the first meeting, and orientation by the Department liaison for which the Commission, Board, or Committee has responsibility, by the City Attorney to review legal issues, and by the Mayor or designee to communicate council philosophy.

The City Council strongly encourages and supports newly appointed Planning Commissioners to attend the Planning Commissioners' Academy to enhance their understanding of land use law, ethical responsibilities, and best practices in planning and decision-making.

### **Application Process**

The City Clerk's Office will manage the recruitment and application process. If there is no vacancy, or the applicant is not selected, the City Clerk will hold the application on file for one (1) year from receipt. It is the applicant's responsibility to note the date of submission and track the expiration of the application. If there is a vacancy, the City Clerk will notify the applicant, and the applicant will be invited to participate. **All applications must be typed, handwritten applications will not be accepted.**

Interviews will be held at a special meeting of the city council. Any applicant who fails to attend their interview will be disqualified and their application will be removed from consideration from the date of the interview and for a year. There will be no excused absences for interviews or rescheduled interviews for applicants who failed to attend their interview.

### **Late Applications**

Applications submitted after the established deadline shall be acknowledged that the application was received past the filing deadline but will not be considered.

### **Eligibility Review**

All applications received by the filing date and time will be processed and reviewed by the City Clerk's Office for conflicts of interest, qualifications, and residency verification. City employees are generally considered to have a conflict of interest; however, eligible retired or former employees may be considered for appointment.

### **Candidate Interviews**

The Council will receive all qualified candidate application materials for review prior to interviews. A yearly mayor appointed council ad-hoc committee will develop questions for a structured interview process for each of the boards and commissions for that year, if needed.

During the interview, applicants will be assessed for background information that would make the candidate a good appointee, any continually recurring conflicts of interest, and reasons for wanting to serve the City. Councilmembers will rotate questions created by the council ad-hoc committee and a reasonable amount of time will be given so that each councilmember has the opportunity to ask the candidate questions.

The interview and selection of candidates is an open process. The City Council reviews the applications and votes to select the most qualified applicants to interview. Following the interviews, the City Council ballots and appoints the applicant(s) receiving the highest number of votes.

### **Absentee Policy**

Advisory body members may be removed by a majority vote of the City Council following **three excused or two unexcused absences** during a twelve-month period. An absence is considered excused when an advisory body member notifies the staff liaison of the intended absence at least twenty-four (24) hours prior to the scheduled meeting time. All other absences are considered unexcused.

Thus, upon the **second excused absence** or **first unexcused absence** from a regular meeting within a twelve-month period, the **staff liaison** shall notify the Board or Commission members by email and via email regarding the absentee policy. The staff liaison should remind the Board or Commission members that with one more absence, the City Council will be informed of the members' absences for further discussion and possible removal. If the City Council determines that the absences occurred for legitimate reasons, the City Council may excuse one or both of the absences.

Upon the **third excused** absence or **second unexcused** absence, the staff liaison shall inform the City Manager's Office. The **City Manager's office** shall draft a letter from the Mayor to the Board or Commission members regarding the absentee policy and request an explanation before the Mayor brings the matter to the Council. The Mayor shall provide a report to the council on a quarterly basis via a report created by the City Clerk's office of any current appointments that require action or attention due to unexcused absences.

Members are also encouraged to give advance notice of their absence from a meeting to the staff liaison as well as to the City Clerk's office, with a brief explanation for the absence. This absentee policy, as expressed in the Council Handbook, shall be as provided on the Board and Commission form and provided in the congratulatory letter welcoming new Board and Commission members.

### **Maddy Act**

Pursuant to Government Code Section 54972, on or before December 31st of every year the City Clerk shall prepare the Local Appointment List of all Board and Commission members that details when all appointive terms will expire during the next calendar year, the name of the incumbent appointee, the date of appointment, the date the term expires, and the necessary qualifications for the position, as well as a list of all members who serve at the pleasure of the City Council and the necessary qualifications for each position. In compliance with the Maddy Act, Government Code Section 54973, a copy of the Local Appointments List shall be posted on the City's Internet website or designated the public library with the largest service population within the City to receive a copy of the list.

### Administrative Support

Administrative support will be provided to the board, commission, and committees by a city staff member.

Board, Commission, and Committee	Administrative Liaisons
Bicycle and Pedestrian Advisory Committee (BPAC)	Economic and Community Development Department/Planning Division
Conference Center Authority	SSF Conference Center Executive Director
Cultural Arts Commission	Parks and Recreation Department
Design Review Board	Economic and Community Development Department/Planning Division
Equity and Public Safety Commission	City Manager’s Office/Equity Officer
Housing Authority	Housing Authority Executive Director/Economic and Community Development Department
Housing Authority Tenant Commission	Housing Authority Executive Director/Economic and Community Development Department
Library Board	Library Department
Measure W Citizens’ Oversight Committee	Finance Department
Parking Place Commission	Public Works Department
Parks & Recreation Commission	Parks and Recreation Department
Personnel Board – <i>Inactive body</i>	Human Resources Department
Planning Commission	Economic and Community Development Department/Planning Division
San Mateo County Mosquito & Vector Control District – SSF representative	SMC Mosquito & Vector Control District
Traffic Safety Commission	Public Works Department
Youth Commission	Library Department

### South San Francisco Boards, Commissions, and Committees

Advisory Body	Number of Members	Term Length	Term Limit	Method of Appointment	Stipend
<b>Bicycle and Pedestrian Advisory Committee (BPAC)</b>	7	4-year term	12-years <i>(3 consecutive terms)</i>	City Council	Yes
<b>Conference Center Authority</b>	10 <i>(ex officio as non-voting member)</i>	4-year term	12-years <i>(3 consecutive terms)</i>	City Council	Yes
<b>Cultural Arts Commission</b>	11	4-year term	12-years <i>(3 consecutive terms)</i>	City Council	Yes
<b>Design Review Board</b>	5	4-year term	None	Planning Commission	Yes
<b>Equity and Public Safety Commission</b>	7 and 1 alternate	4-year term	12-years <i>(3 consecutive terms)</i>	City Council appoints three (3) members at-large and five (5) members appointed by District	Yes
<b>Housing Authority</b>	5	4-year term	16-years <i>(4 consecutive terms)</i>	City Council	Yes
<b>Housing Authority Tenant Commission</b>	2	2-year term	None	City Council	No
<b>Library Board</b>	5	3-year term	12-years <i>(4 consecutive terms)</i>	City Council	Yes
<b>Measure W Citizens' Oversight Committee</b>	5	4-year term	Limited Appointment	City Council	Yes
<b>Parking Place Commission</b>	3	3-year term	12-years <i>(4 consecutive terms)</i>	City Council	Yes
<b>Parks &amp; Recreation Commission</b>	7	4-year term	12-years <i>(3 consecutive terms)</i>	City Council	Yes
Personnel Board <i>Inactive body</i>	5	4-year term	12-years <i>(3 consecutive terms)</i>	City Council	Yes
<b>Planning Commission</b>	7	4-year term	12-years <i>(3 consecutive terms)</i>	City Council	Yes

Advisory Body	Number of Members	Term Length	Term Limit	Method of Appointment	Stipend
San Mateo County Mosquito & Vector Control District SSF representative	1	2 or 4-year term	12-years <i>(3 consecutive terms)</i>	City Council	Paid by SMC Mosquito & Vector Control District
Traffic Safety Commission	5	3-year term	12-years <i>(3 consecutive terms)</i>	City Council	Yes
Youth Commission	15	2-year term	Age Limit	City Council	Yes

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**CITY COUNCIL PROCEDURES  
AND PROTOCOLS  
RESOLUTION NO. 25-2026  
ADOPTED: April 8, 2026**





# City of South San Francisco

## City Council

### Resolution: RES 25-2026

P.O. Box 711 (City Hall, 400  
Grand Avenue)  
South San Francisco, CA

**File Number: 26-1650**

**Enactment Number: RES 25-2026**

RESOLUTION APPROVING AMENDMENTS TO THE  
CITY OF SOUTH SAN FRANCISCO CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK  
RESOLUTION.

WHEREAS, the City Council adopted a City of South San Francisco City Council Handbook on September 13, 1989, which established operating procedures and general policies of the City Council; and

WHEREAS, the City Council adopted amendments to the City Council Handbook on November 28, 2007, February 25, 2009, October 14, 2009, February 10, 2010, February 23, 2011, November 9, 2011, June 24, 2015, November 30, 2016, August 25, 2021, November 8, 2023, and April 8, 2026.

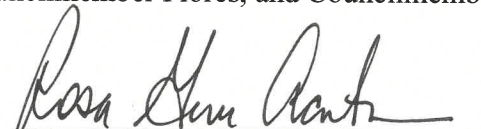
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of South San Francisco hereby approves the attached amended version of the City Council Procedures and Protocols Handbook and Appendices (Exhibit A).

\* \* \* \* \*

At a meeting of the City Council on 4/8/2026, a motion was made by Councilmember Nicolas, seconded by Vice Mayor Nagales, that this Resolution be approved. The motion passed.

**Yes: 5** Mayor Addiego, Vice Mayor Nagales, Councilmember Coleman,  
Councilmember Flores, and Councilmember Nicolas

Attest by

  
Rosa Govea Acosta, City Clerk

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX A**

**SELECTION OF MAYOR AND VICE MAYOR  
COUNCIL REORGANIZATION**





## Selection of Mayor and Vice Mayor Council Reorganization

As set forth in the City Council Handbook, the Vice-Mayor is usually selected as the Mayor. The City Council believes the community benefits by ensuring the positions of Mayor and Vice-Mayor are held at various times by all council members. The City Council also believes the experience as a council member will assist those who ultimately serve as Mayor or Vice-Mayor. To that end, the following process is hereby adopted for the future selection of Mayor and Vice-Mayor. This process will remain in effect until modified by a subsequent City Council.

The City Council shall meet annually to choose one of its members as Mayor and one of its members as Vice-Mayor. The meeting to determine organization or reorganization of the City Council (i.e., selection of Mayor and Vice-Mayor) shall be held on or before the Tuesday that immediately precedes the Wednesday of the first regularly scheduled meeting of the City Council in December, unless the Mayor and City Council select a different date in discussion with the City Clerk's office. In even numbered years in which a regular City Council election occurs, the reorganization shall follow certification of the election results by the San Mateo County Office of Elections.

### Rotation by District:

Members **rotated in order of the district number** they represent. With the advent of district elections, it is important to ensure that every district has an equal chance at representation through the Mayorship.

In the event of new councilmembers being elected and beginning their term on their district's "Mayor year," it will be required for any new Councilmember to start their first year as Councilmember, then the subsequent year as Vice Mayor, and the third year as Mayor.

The order will temporarily skip that district's new councilmember to the next in line, until that new Councilmember is in their **third year**, where they will have some experience that allows them to serve more effectively. The order will resume following the temporary displacement.

This will allow for newly elected Councilmembers to gain experience instead of immediately assuming the Mayor role. A councilmember **does not** have to be Vice Mayor the year immediately preceding their Mayoral year. If any council member declines a nomination during a year when they would have been eligible to be appointed as Mayor or Vice-Mayor, the next eligible council member in sequence shall be nominated for that position. The councilmember that declined the nomination will then move to the bottom of the rotational order as if they had just completed serving a year as Mayor.

Based on the Order of Mayor Rotation per District, the succession according to the current policy would be as follows:

**Order of Mayor Rotation per District**

<b>Year</b>	<b>District</b>
2025	District 5
2026	District 1
2027	District 2
2028	District 3
2029	District 4

The election of the Mayor and Vice -Mayor shall be by vote of a majority of members of the City Council. The Mayor shall be seated and assume the duties of presiding officer immediately following the election of Mayor and before the election of the Vice Mayor unless a motion is carried to elect and seat the Mayor and Vice Mayor at the same time.

The mayoral rotation system can be changed at any time by a Council majority vote.

**Installation and Reorganization Costs**

Council members shall contribute to the cost of light snacks/desserts and refreshments for the reception following the Installation and Reorganization Meeting. Each council member's contribution shall not exceed \$200. During any year in which the City Treasurer and City Clerk are up for election, the City Clerk and City Treasurer shall each contribute up to \$200 for the cost of light snacks/deserts and refreshments for the reception following the Installation and Reorganization Meeting. The incoming Mayor may choose to separately pay for additional snacks and refreshments beyond those normally provided every year.

**Recognition of Outgoing Mayor and/or Council Members**

The Installation and Reorganization Meeting will also include recognition of the outgoing Mayor and any outgoing council member(s). As part of the recognition, the City may provide the outgoing Mayor and any outgoing council member(s) with a nominal gift recognizing their service to the City.

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX B**

**GUIDE TO CONDUCTING A MEETING**





## Guide to Conducting a Meeting

**Call to Order:** “The meeting of the South San Francisco City Council for \_\_\_\_\_ will come to order.” *(Mayor may also advise the audience of any special circumstances or announcements.)*

**Roll Call:** “The Mayor will ask for Roll Call.”

**Pledge of Allegiance:** “Please stand for the Pledge of Allegiance.”  
*(Mayor announces who will lead the pledge.)*

**Levine Act Disclosures (SB 1181)** – The City Clerk or designee will ask members of the City Council to state **whether they have received campaign contributions** from a party involved in the matter that would trigger the Levine Act.

Council will provide a verbal response and state whether or not there is a disclosure to report.

- Councilmember disclose on the record:
  - The **name of the contributor**
  - The **amount** (or that it exceeds the threshold)
- **The City Clerk will confirm with the City Attorney recusals if applicable.**  
If a member is **disqualified** under the Levine Act, the clerk notes that the member:
  - Will **not participate** in discussion
  - Will **not vote** on the item
  - May be required to **leave the dais** during the item (depending on agency rules)

**Announcements from Staff:** “City Manager\_ are there any announcements from staff?”

**Presentations (shall not exceed 15 minutes):** All proclamations, certificates of recognition, and presentations under this item.

**Council comments/requests/Honoring the Life of Requests:** Council announcements, requests, and honoring the life of requests.

**Public Comments (Total time allotment of 30 minutes):** City Clerk or designee invites speakers and announces that this section is designated for items not on the agenda or to speak on *Consent Calendar items*. Speakers will be called in random order. All speakers in person will be given priority, then, if allowed, remote speakers. If there are no speaker cards, ask if anyone would like to address the Council on a matter not on the Agenda.

**Below is guidance of speaker time limits, subject to change by the Mayor or presiding officer:**

**Speaker Time Limits**

Number of Speakers	Speaker Time
1 -10 Speakers	3 minutes per speaker
11 -20 speakers	2 minutes per speaker
21 + speakers	1 minute per speaker

**Consent Calendar:** “

*All matters under the Consent Calendar are considered to be routine and noncontroversial. These items will be enacted by one motion, without discussion, and **are not read individually**. If, however, any Council member(s) wishes to comment on an item, they may do so before action is taken on the Consent Calendar. Following comments, if a Council member wishes to discuss an item, it will be removed from the Consent Calendar and taken up in order after adoption of the Consent Calendar.*

- Ask for a motion to approve.
- If any items are pulled by a Councilmember, announce: “Item Nos. (cite numbers) will be taken off the Consent Calendar for discussion.”
- Ask for a motion and a second, “All in favor, oppose?”, “The motion passes.” **OR**
- Ask for a motion and a second, roll-call vote.
- Items taken from the Consent Calendar should be considered one at a time and the appropriate staff member will approach the podium to answer Council’s question(s) or concerns(s)
- Ask for a motion and second for approval for each item.

*(Any Councilmember wishing to abstain from approving minutes due to absence shall state their abstention for the record.)*

**Public Hearings**

- The Mayor requests the item to be read.
- **The Mayor opens the public hearing.**
- Call for the staff report.
- Inquire if the applicant is present and if so, invite the applicant to speak after the applicant speaks, ask if there are any speakers for the item and call speakers.
- When everyone has spoken, and all speakers have provided public comment, **the Mayor closes the public hearing.**
- Council discussion – when discussion is complete, ask “Do I have a motion?”, “A second?”, “All in favor/oppose?”. On sensitive items and on motions requiring 4/5 or 2/3 vote, a roll call vote is advisable. State: “Motion passes”.
- If no second is made, announce that the motion died for lack of a second.
- If an amendment is made to the original motion after it is seconded, obtain a motion and a second on the amendment first.
- If a motion for approval fails, obtain a motion, second and vote to deny.

**Administrative Business**

- The Mayor requests the item to be read.
- Staff Report
- Discussion
- Vote

**Legislative Business**

- The Mayor requests the item to be read.
- Staff Report
- Discussion
- Vote

**Items from Council/Committee Reports/Announcements/:** Committee Reports and Announcements

**Closed Session**

- The Mayor requests that the City Clerk or designed read the item(s).
- The Mayor indicates that the Council will enter closed session.
- Reporting out – if no item(s) approved, state “direction given no action taken”; if item(s) approved, have City Attorney report.

**Adjournment**

- When all business is concluded, the Mayor adjourns the meeting.
- Gavel the meeting adjourned.

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX C**

**CITY COUNCIL TRAVEL BUDGET AND  
EXPENSE REIMBURSEMENT POLICY**





## City Council Travel Budget and Expense Reimbursement Policy

The travel guidelines in this Policy establish a City policy for official travel by elected City officials. Travel should be necessary to accomplish the city's purposes effectively and economically, and incurred expenses should be prudent, reasonable, and necessary. The Mayor and Councilmembers may undertake official, authorized travel and be reimbursed by the City for all reasonable and necessary expenses incurred while traveling on City business.

It is the policy of the City Council of the City of South San Francisco that Councilmembers and the Mayor be reimbursed for actual and necessary expenses incurred in the performance of official duties, subject to budget, applicable laws, standards, and procedures established by the Council.

### **Approval process for travel requests:**

All travel and meeting expenses shall be approved as part of the annual budget process. Once the budget is approved, travel and meetings included therein will be considered as approved, and no further Council action is necessary. The City Manager's office will monitor appropriations and controls. Travel and meeting expenses not included in the Council's budget must be approved on consent at a Council meeting prior to the travel dates.

Reimbursable expenses are limited to those that would be deductible business expenses under IRS regulations and are incurred in compliance with IRS "accountable" plan requirements. Expenses will further comply with the **City's Administrative Instructions, Section IV, No.2 (Travel and Training Policy and Reimbursement of Expenses)**. An expense will not be reimbursable if it is paid for or reimbursed by another entity or person.

All claims for reimbursement shall be submitted using the **City Council Expense Reimbursement Forms (Appendix D)**, signed and certifying that expenses were incurred in connection with an eligible expense. All expense reimbursement forms shall be completed to show the general nature of the costs incurred, such as travel, meals, and lodging, and the relationship of all expenses to City business in compliance with the city's expense reimbursement policies. The forms will be processed by the City Manager's Office and approved by the Finance Department.

As part of the adoption of the annual operating budget each fiscal year, the City Council will allocate an individual appropriation amount for Council travel and expense reimbursement for each Councilmember and the Mayor. Such allocation may not be exceeded without approval of the City Council. To the extent an individual annual budget allocation is exceeded without Council approval, such excess will be the responsibility of the Councilmember.

A City credit card may be issued to a Councilmember upon request following the established guidelines listed in the **City’s Administrative Instruction, Section IV, No. 6 (Use of City Issued Credit Cards)**. All receipts for charges on a City credit card, including supporting documentation and receipts, shall be submitted to the City Manager’s Office within five days of the incurrence of the charge or completion of the travel, whichever is later.

The City Manager's office shall make all travel arrangements, except for the use of a personal vehicle, to ensure the most economical fare available, consistent with the individual's available travel time. Government and group rates must be used for lodging and transportation when available.

If the business travel includes a non-business personal trip, the City Manager’s office will make the travel arrangements so that the business portion of the cost can be identified. In these instances, the cost of personal travel will be paid for by the individual Councilmember and the City credit card may not be used to pay for the travel arrangements. Any additional expenses resulting from the inclusion of the nonbusiness trip will be the responsibility of, and will be paid for by, the individual.

If the trip is paid for by the individual making a nonbusiness personal trip, then an expense claim for reimbursement of the expenses related to City business must be submitted at the completion of the trip with supporting documentation and receipts.

Unless the City Council approves the expense in advance, no expense will be reimbursed that exceeds the following rates:

- A. Air Fare: Allowable air travel costs shall be calculated using the shortest and most direct route with the least en-route stops. All air travel shall be booked as far in advance as possible to receive the lowest fares possible, except where the lowest fare is for an overnight flight, which may be chosen by the individual but is not required.
- B. Personal Vehicle Use: The federal mileage rate for business use of a taxpayer’s private vehicle, as published by the Internal Revenue Service of the United States of America, will be multiplied by the number of miles traveled in an individual’s personal vehicle to determine the maximum expense reimbursement allowed.
- C. Use of City Vehicle: When City vehicles are available, their usage is encouraged but not required.
- D. Lodging: If lodging expense is incurred in connection with a conference or organized educational activity specified in Government Code Section 53232.2(d), then the lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available when booking the reservation. If the group rate is not available, then lodging expenses that are comparable and deemed reasonable shall be subject to approval and reimbursement.

- E. Meals: Councilmembers will be entitled to reimbursement for meals and associated gratuities in an amount equivalent to the per diem rate for City employees with supporting documentation as listed in the **City’s Administrative Instructions, Section IV, No.2 (Travel and Training Policy and Reimbursement of Expenses)**. Alcohol expenses will not be reimbursed.
  
- F. Other Expenses: Actual and reasonable incidental costs incurred for travel away from home, considering all the circumstances, will be reimbursed for: Telecommunication and fax charges, telephone expenses, laundry and/or dry cleaning charges, parking, shuttle, and taxi, and other miscellaneous necessary expenses.

**Reports at Next Regular Meeting**

The Councilmember shall provide a brief oral or written report on the accomplishments of any business trip attended at the expense of the City at or by the next regular meeting of the City Council.

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX D**

**CITY COUNCIL EXPENSE REIMBURSEMENT  
AND  
REQUEST FOR TRAVEL FORM**



**CITY OF SOUTH SAN FRANCISCO  
CITY COUNCIL EXPENSE REIMBURSEMENT**



<b>NAME</b>	
-------------	--

DATE	DESCRIPTION	AMOUNT	PURCHASED ON CITY CARD? (Y/N)

A) TOTAL SPENT: \_\_\_\_\_

**MONTHLY MILEAGE REPORT**

<b>MONTH/YEAR</b>	
-------------------	--

DATE	EVENT DESCRIPTION	MILES

\* REIMBURSEMENT RATE (.725 per mile, eff. 01/26-12/26): B) TOTAL MILES: \_\_\_\_\_

Submitted by: \_\_\_\_\_

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

**AMOUNT OF CLAIM (A PLUS B):** \_\_\_\_\_

Approved By: \_\_\_\_\_

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

City Manager

# CITY OF SOUTH SAN FRANCISCO CITY COUNCIL REQUEST FOR TRAVEL



Date Submitted\*: \_\_\_\_\_

*\*Please provide the City Manager's Office with notice as well as event information (description, schedule and/or agenda if applicable, etc.) at least one month prior to departure date.*

<b>NAME</b>	
-------------	--

<b>DEPARTURE DATE</b>		<b>RETURN DATE</b>	
-----------------------	--	--------------------	--

<b>NAME OF CONFERENCE / TRAINING</b>			
<b>PURPOSE</b>			
<b>DESTINATION</b>		<b>METHOD OF TRAVEL</b>	

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

\_\_\_\_\_  
Councilmember Signature

## **ESTIMATED EXPENSES**

For my travel, I will be purchasing my expenses with...

CITY CALCARD       PERSONAL CARD       BOTH

<b>EXPECTED TOTAL EXPENSES (INCL. REGISTRATION, TRAVEL, LODGING, FOOD, ETC)</b>	
---	--

*Complete the rest of the form upon return to the City.*

<b>TOTAL EXPENSES INCURRED DURING TRAVEL</b>	
--	--

*Upon my return to the City, I will provide the City Manager's Office with required receipts and/or supporting documents.*

Approved By: \_\_\_\_\_

City Manager

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

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX E**

**SUMMARY OF ELECTED OFFICIALS  
(CITY COUNCIL AND CITY TREASURER)  
BENEFITS**



City of South San Francisco  
Human Resources Department

Appendix E

Summary of Elected Officials (City Council & City Treasurer) Benefits

These are exempt, elected positions not eligible for overtime compensation.  
Effective Date: (Supersedes City Council Handbook Appendix 4, Resolution)

<i><b>Benefit</b></i>	<i><b>Provision</b></i>	<i><b>When Eligible</b></i>
<b><i>Pay and Compensation Information</i></b>		
<i>Compensation</i>	City Council: \$1,400 per month (\$646.15 biweekly) City Treasurer: \$1,338 per month (\$617.60 biweekly)	Date of appointment
<b><i>Health &amp; Welfare Benefits</i></b>		
<i>Medical Insurance</i>	City pays 90% of HMO premium for full-time non-safety AFSCME-represented employees' HMO coverage for member and eligible dependents under age 26. These employees pay 10% towards the premium. Employees pay any additional premium cost over the HMO rate for higher cost plans. Elected officials' premium contributions shall match these non-safety employees' contributions.	First of the month following date of appointment
<i>Vision Insurance</i>	City pays 100% of premium for full-time non-safety AFSCME-represented employees' HMO coverage for member and eligible dependents under age 26. Elected officials' premium contributions shall match these non-safety employees' contributions.	First of the month following date of appointment
<i>Dental Insurance</i>	City pays 100% of premium for full-time non-safety AFSCME-represented employees' HMO coverage for member and eligible dependents under age 26. Incentive plan starts at 70% and may increase each year until 100% of allowed fee. Calendar year maximum of \$2,000 per enrollee and orthodontia lifetime cap of \$1,000 for dependent children. Elected officials' premium contributions shall match these non-safety employees' contributions (i.e., \$0). Option to buy-up to enhanced dental plan.	First of the month following completion of 6 months of employment.
<i>Health Savings Account (HSA)</i>	Councilmembers enrolled in the PPO High Deductible Health Plan (HDHP) may contribute to an HSA through the City's HSA provider.	Upon qualified plan (PPO HDHP) enrollment.
<i>Discretionary Benefit Option</i>	City pays \$550 per month into pre-tax 457 deferred compensation account if elected official waives City health coverage and maintains medical coverage elsewhere.	First of the month following date of appointment
<i>Executive Management Physical Fitness Program</i>	Elected officials are allowed up to \$1,000 per fiscal year to use for physical fitness or unreimbursed health care costs.	Date of appointment
<i>Life and Accidental Death &amp; Dismemberment</i>	City paid life insurance valued at \$50,000 and AD&D amount of \$50,000.	First of the month following date of appointment
<i>Short-term and Long-term Disability</i>	City paid disability insurance. 20-day waiting period and sick leave exhausted with up to a maximum of 66.2/3% of pay.	First of the month following date of appointment
<i>Paid Family Leave</i>	City paid family leave that provides 60% income replacement for up to 8 weeks on a continuous or intermittent basis within a 12-month period to care for a seriously ill family member, bond with a new child, or when a military exigency applies.	First of the month following date of appointment
<b><i>Other Benefits</i></b>		
<i>Direct Deposit</i>	Direct deposits of payroll checks available.	Date of appointment
<i>Employee Assistance Program</i>	Available to elected official and eligible dependents for up to 3 free visits per 6-month period.	Date of appointment
<b><i>Separation/Retirement</i></b>		

City of South San Francisco, Human Resources  
 Summary of Elected Officials Benefits  
 Effective Date: 12/11/2024

<i><b>Benefit</b></i>	<i><b>Provision</b></i>	<i><b>When Eligible</b></i>
<i>Deferred Compensation (457 Plans)</i>	Elected officials may contribute pre-tax or after-tax dollars towards retirement. Contribution limits are determined by IRS regulations.	First of the month following date of appointment
<i>Medicare</i>	Elected officials appointed/elected after 1986 participate in Medicare.	Date of appointment
<i>Public Employees' Retirement System (PERS)/ Social Security or 3121 Plan</i>	Eligible for 3121 retirement plan with the official contributing employee share. Excluded from PERS membership unless an election for membership is filed with CalPERS. Elected Official participating in PERS must contribute employee's share and participate in Social Security. PERS Annuitants are excluded from 3121 and PERS/Social Security.	Date of appointment
<i>Retiree Health Benefits</i>	Only those officials elected/appointed prior to 1995 are eligible for retiree health benefits. City-paid retiree medical coverage. Covered dependent may continue coverage at his/her cost. Dental and Vision insurance may be purchased from City. Upon retiree's death, 2 months City-paid medical coverage for spouse.	After minimum 5 years of City service and age 50; concurrent City and CalPERS retirement (if applicable).

**Note:** This is a summary of benefits for Elected Officials (City Council) and is not intended to provide all information. Specific facts about the benefits are based on the terms and conditions of the City's contracts with the providers, and any limits, as stipulated by law. Summary plan documents may be obtained from Human Resources.

Appendix E

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX F**

**CITY COUNCIL POLICY REGARDING  
COUNCILMEMBER USE OF CITY PROVIDED  
TELECOMMUNICATION EQUIPMENT**





## City Council Policy Regarding Councilmember Use of City Provided Telecommunication Equipment

### **Legal Background:**

Government Code section 37350 authorizes the City to authorize the acquisition of personal (i.e. computers, chairs, cars, telephones, etc.) property. That section also authorizes the City to establish controls for the use of such property. One limitation on the use or disposition of public property is the gift of public funds prohibition in Article 16, Section 6 of the California Constitution. That section prohibits the Legislature from authorizing cities to make gifts of public money or things of value to any individual. The courts have, however, upheld expenditures which have an incidental private benefit, where the primary purpose of the expenditure is for a public purpose.

The ability of councilmembers to receive information or communicate with city staff and constituents through telephone contact or e-mail or to research city-related business on the Internet does serve a public purpose. Thus, providing telephones and computers with e-mail and Internet capabilities for use for city business does not violate the gift of public funds prohibition. A secondary issue is whether this equipment may be used for personal, non-city related business. There is no case law which would expressly prohibit such use provided that the use is incidental to the primary use of the computer for city business.

### **2. Usage Policy for Telecommunications Equipment:**

A. City-owned telecommunications equipment including cellular telephones, computers and fax machines (collectively "telecommunications equipment") shall be used primarily for public purposes. Such public purposes include, but are not limited to, usage related to City business, communication with City employees, communications with constituents, and communications with other persons related to City business. The communications equipment may be used for incidental private purposes. "Incidental private purposes" means that usage of the telecommunications equipment for non-public purposes constitutes 33% or less of the total usage of the telecommunications equipment and does not involve the City incurring any additional expense.

B. Each councilmember shall receive on a quarterly basis an invoice of all calls associated with his or her cellular telephone for the three month period ending on the last day of the preceding month. Within thirty days of receipt of the invoice, each councilmember shall reimburse the City for all private telephone calls shown on the invoice.

C. No data related to usage for incidental private purposes shall be stored on the City-owned computer's hard drive. If a councilmember desires to download data or files for incidental private purposes, the data or files shall only be downloaded to a diskette or other storage media purchased by the councilmember. A councilmember may load commercially available, properly licensed, software into their computer.

D. With respect to software and data files that the user did not create on the computer, the user shall not load either onto the computer unless they have been provided by the City or they have been checked for viruses. This limitation is intended: (1) to limit the potential exposure of the city system to viruses; and (2) with regard to new software, to allow the City to possess proper evidence of authorized ownership of all software on City-owned computers.

E. The telecommunications equipment shall not be used for any campaign activities or any partisan election purposes. The telecommunications equipment may be used for objective, non-partisan informational purposes.

F. All use of telecommunication's equipment shall comply with the restrictions of the Brown Act.

G. Upon leaving office, a councilmember shall have the option of purchasing surplus City-provided telecommunications equipment at market value. The value of the equipment should be determined by standard market evaluation processes for personal property, which include searches on online auction sites such as eBay and identification of the South San Francisco book value. All non-surplus City-provided equipment shall be returned to the City. Equipment shall be considered "surplus" when at the end of the normal usage period.

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX G**

**DONATIONS TO THE  
CITY OF SOUTH SAN FRANCISCO**



## CITY OF SOUTH SAN FRANCISCO INTEROFFICE MEMORANDUM

**DATE:** July 25, 2019

**TO:** Honorable Mayor and City Council

**FROM:** Jason Rosenberg, City Attorney

**SUBJECT:** Donations to the City of South San Francisco

This memo addresses whether any potential conflict of interest may exist for individual Councilmembers when donations are made to the City to be used to underwrite the cost of a City sponsored event or City facility.

The conflict-of-interest laws generally apply when a gift in the form of a donation is made to a particular councilmember. However, where such a donation is made to the public agency rather than to the public official, it does not qualify as a gift under the conflict of interest laws pursuant to California Code of Regulation Section 18944. Thus, under the limited circumstances of a gift to the public agency and provided that such gift is made consistent with the provisions of Section 18944, the gift does not create a conflict of interest should the donor of the gift be an individual or business that may at some point in the future have an item before the City Council for consideration.

Specifically, Regulation 18944 provides that a payment shall be deemed a gift to the public agency and not a gift to the public official if all of the following requirements are met:

- (1) The payment is used for official agency business.
- (2) The agency head controls use of the payment.
- (3) The agency reports the payment on FPPC Form 801 (Payment to Agency Report) that is maintained as a public record and includes the following information:
  - (a) A description of the payment, the date it was received, the intended purpose and the amount of the payment or the actual or estimated fair market value of the goods or services provided, if the amount is unknown.
  - (b) The name and address of the individual donor. If the donor is an entity, the report must also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from another person for the specific purpose of making the payment to the agency, the report must contain the name of each person and the amount given by each person.
  - (c) The use of the payment, and the name, title, and department of the agency official who used the payment.
  - (d) The signature of the agency head.
  - (e) For any quarter when payments aggregate to \$2,500.00 or more since the last filing, the local agency must submit a copy of the form(s) or a detailed summary of the information on the form to the filing officer who receives the agency employees' statements of economic interests, within 30 days after the close of the quarter. The filing officer shall post a copy of the form or the information in the form on its website, in a prominent fashion within 30 days after the close of any quarter in which the agency receives payments aggregating to \$2,500.00 or more since the last filing.

Payment to Agency Report

A Public Document

PAYMENT TO AGENCY REPORT

<b>1. Agency Name</b>		Date Stamp	<b>California 801</b> Form For Official Use Only
Division, Department, or Region (if applicable)			
Street Address			
Area Code/Phone Number	Email	<input type="checkbox"/> Amendment (explain in comment section)	
Agency Contact (name and title)		Date of Original Filing: _____ (month, day, year)	

2. Donor Name and Address

Individual \_\_\_\_\_ Last Name First Name  Other \_\_\_\_\_ Name

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

If "Other" is marked, describe the entity's business activity (if business) or its nature and interests.

➔ If applicable, identify the name of each source and the amount(s) received by the donor for this payment:

\_\_\_\_\_ \$ \_\_\_\_\_ Name \_\_\_\_\_ \$ \_\_\_\_\_ Amount

3. Payment Information (Complete Sections 3.1 (a or b), 3.2, 3.3)

3.1 (a) Travel Payment

\_\_\_\_\_ Location of Travel \_\_\_\_\_ Dates (month, day, year) \_\_\_\_\_

\_\_\_\_\_  Rail  Air  Bus  Auto  Other \_\_\_\_\_  
Transportation Provider Check Applicable Boxes Name of Lodging Facility

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
Lodging Expenses Meal Expenses Transportation Expenses Other Expenses Total Expenses

3.1 (b) Payment(s) not related to travel:

\_\_\_\_\_ \$ \_\_\_\_\_  
Dates (month, day, year) Total Expenses

3.2. Payment Description. Provide a specific description of the payment and its agency purpose and use.

3.3. Identify the officials who used the payment in Section 3.1 (See instructions)

_____ Last Name	_____ First Name	_____ Position/Title	_____ Department/Division
_____ Last Name	_____ First Name	_____ Position/Title	_____ Department/Division

4. Verification

I authorized the acceptance of the reported payment(s) as in compliance with FPPC regulations.

\_\_\_\_\_ Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Title \_\_\_\_\_ (month, day, year)

Comment:  
(Use this space or an attachment for any additional information)

# Payment to Agency Report Instructions

## A Public Document

This form is used to report certain payments received by state and local government agencies. It includes:

- a payment for an official's travel expenses for the purpose of facilitating the public's business in lieu of a payment using agency funds; and
- a payment that would otherwise be considered a gift or income to the benefiting official, but is instead accepted on behalf of the agency.

FPPC Regulations 18944 and 18950.1 provide a procedure that state and local agencies may use to disclose payments used for agency purposes and paid by a third party. The regulations' reporting procedures provide an alternative means to disclose a payment that may otherwise be considered income or a gift to a benefitting employee and subject to reporting on a Statement of Economic Interest, Form 700.

### When and Where to File

An agency accepting a payment pursuant to Regulation 18944 and 18950.1 must complete Form 801 for each payment received regardless of the amount. The form must be maintained as a public document. If payments aggregate \$2,500 or more in a calendar quarter, website posting is required.

### Website Posting:

#### State Agencies

Within 30 days after the end of a calendar quarter if aggregated reported payments, for travel and non-travel purposes, total \$2,500 or more:

- the agency must post the reports (or a report summary) on the agency website; and
- forward the information to the FPPC which will also post the information.

#### Local Agencies

The website posting rules differ for travel and non-travel payments.

#### Travel

Within 30 days after the end of a calendar quarter if aggregated reported payments total \$2,500 or more:

- the agency must post the reports (or a report summary) on the agency website; and
- forward the information to the FPPC.

### Payments Not Related to Travel

The agency's filing officer for Statement of Economic Interests, Form 700, must receive the report. Within 30 days after the end of a calendar quarter if aggregated reported payments total \$2,500 or more, the local agency must post the information on the local agency website. A report is not sent to the FPPC unless the agency does not have a website.

Postings must be displayed in a prominent manner and easily accessible. Reports may be posted earlier.

**FPPC:** Statements should be emailed to [form801@fppc.ca.gov](mailto:form801@fppc.ca.gov). Statements may also be mailed to 1102 Q Street, Suite 3000, Sacramento, CA 95811 or faxed to (916) 322-3711.

### Part 1. Agency Identification

List the agency's name and address and the name of an agency contact. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

### Part 2. Donor Information

Disclose the name and address of the donor. If the donor is not an individual, identify the business activity or nature and interests of the entity.

If the donor received funds from other sources that were used in connection with the payment, disclose the name and payment information for each source.

### Part 3. Payment Information

Expenses may be rounded to whole dollars.

**Section 3.1.a.** Itemize travel payments including departure and return dates. Complete all fields, use "n/a" appropriately. Total the expenses for items such as taxi rides, gratuities, and rental cars in the "other" field and describe in the comments section.

**Section 3.1.b.** Report agency payments that are not travel related.

### Section 3.2. Description

All payments must include a specific description of the use of the payment and the intended purpose for agency business. For example, a travel payment may read: Travel to attend an EPA co-sponsored solar energy seminar in Washington D.C.

### Section 3.3. Identify Officials

**Travel Payments:** The name of the position/title and department of each official who used the payment is required. List the official's name if he/she is an elected or appointed official. It is not required to list the names of other officials, rather insert "n/a." Do not leave blank.

**Non-Travel Payments:** The name, position/title and department of the agency official who used the payment must be identified. All officials' names are required.

### Part 4. Verification

Verification of travel payments must be signed by an authorized agency official. Such individuals are those who have the authority to approve similar travel payments when made with agency funds.

Verification of non-travel payments must be signed by the agency head.

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX H**

**POLICY ON DEDICATION OF CITY FACILITIES**





## **Policy on Dedication of City Facilities**

Council has suspended the Naming Policy for city streets, facilities, and amenities that recognize individuals. During this suspension, no new requests or approvals to name civic assets in honor of individuals will proceed. This pause allows Council to review and consider potential updates to the policy before future naming decisions are made.

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**APPENDIX I**

**POLICY ON EXPRESSIONS OF  
CITY OR COUNCIL POSITIONS**





## **POLICY ON EXPRESSIONS OF CITY OR COUNCIL POSITIONS**

Be cautious in representing City Positions on Issues. Individual City Councilmembers are not authorized to speak on behalf of the City or the Council with regard to City or Council policy or positions, except when such policy or position has been clearly established or when the Councilmember has been designated as a spokesperson on a given subject.

Periodically the City Council is requested to formally support or oppose state or federal legislation. In considering whether or not to take such action, it is Council policy to determine first if the legislation involves matters pertaining directly to the City of South San Francisco or its residents as a whole. It should do this in conjunction and working with the City Manager and considering the city's hired consultants specializing in public policy/affairs in legislative matters at the state or federal level. The Council may also weigh the position of the League of California Cities in such policy considerations. If the subject matter does not relate directly to city business or to local citizens, then the Council declines to take a position. If the legislation could be expected to affect the city or its citizens, then the Council may elect to take a position.

Every Councilmember will be allowed to send letters of support or opposition with their individual name signed on it, and without any other Councilmember's name on it unless consent is given. It will be clearly stated in the letter that the statement is a reflection of a singular councilmember's words, and not the official position of the city or the entire City Council.

For legislative matters that are voted on during council meetings, letterhead and signatures of the Mayor, Vice Mayor, and three Councilmembers will all be included in the letter. Legislative letters of support or opposition passed in this manner will be the official position of the city or City Council and the letter will state it as such that its contents was voted on by a majority or unanimously by the Councilmembers.

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX J**

**POLICY ON COMMUNITY FUNDING**





**POLICY ON COMMUNITY FUNDING**

In making grants available to community organizations, the City Council adheres to the following policy:

1. Grant awards are made only for purposes which are legal.
2. Grant funds are to primarily benefit South San Francisco residents/taxpayers.
3. One-time grants for capital items, or seed money, for new or expanded services are preferred to continuing grants for operations or unrestricted funding.
4. Recipients are asked to provide financial and performance accountability.
5. Requests for funds must be received in a timely fashion. The application period commences on the first Monday in January and closes on the last Friday in January of each year. Applications received beyond established deadline dates will not be considered.
6. Preference will be given to requests which are of a matching nature.
7. Other sources of available funds should have been diligently sought or are generally unavailable in the amounts needed.

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PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX K**

**MUNICIPAL CODE CHAPTER 10.75.010  
RULES OF CONDUCT FOR CITY PROPERTY**



CHAPTER 10.76  
**Rules of Conduct for City Property**

**§ 10.76.010. Definitions.**

- A. City Property. For purposes of this chapter, "city property" shall include all real property and facilities either owned by the city or in which the city has a property interest or property management responsibility. However, City Property shall not include property owned or leased by the City if such property is leased or subleased exclusively to a non-City entity.
- B. Persons-in-Charge.
1. For purposes of ordering persons to leave city property, the following are "persons-in-charge"
    - a. Any peace officer as defined by California law.
    - b. Any person providing security services on any city property pursuant to any contract with the city, or with any person, organization, firm or corporation managing a city property on the city's behalf.
    - c. City property or facility manager, or their designee.
    - d. With respect to facility or space assigned to a city department, the director, deputy director, or manager of the city department, including the city clerk, or their designee.
    - e. The city manager, the city attorney, or designee of these officials.
  2. Delegation to a designee shall be made in writing. Any person so designated shall be a person-in-charge until the delegation is terminated or the designated person ceases to be an employee or officer of the city.
  3. For purposes of ordering persons to leave a public meeting of a city board or commission, the persons-in-charge shall be designated within the South San Francisco City Council Handbook or commission handbook, as may be amended from time to time.
  4. The authority granted to persons-in-charge by this chapter are in addition to, and not in lieu of, any other authority granted under this code.

(Ord. 1650, 10/11/2023)

**§ 10.76.020. Rules of conduct at city property.**

- A. To maintain an environment that promotes orderly administrative and business operations, and to take reasonable and prudent actions to protect the health, welfare and safety of all persons at city property, the rules of conduct in this section apply and are to be enforced at all city property.
- B. The rules of conduct for city property are as follows:

1. No person shall engage in any activity that would constitute a violation of federal, state, or local law or regulation.
2. No person may deface, damage, or destroy city property or city-owned personal property.
3. No person shall enter, attempt to enter, or remain in any areas of city property designated red or restricted, or closed to public access, for any purpose including but not limited to video or audio recording, unless such person has obtained authorization to enter, approved by a person-in-charge, and escorted by a city staff person at all times.
4. No person shall engage in an activity that disrupts or interferes with:
  - a. The normal operation or administration of city business at city Property, including, but not limited to, entering into areas of city administrative offices that are designated as employee only areas without authorization to enter, approved by a person-in-charge, and escorted by a city staff person at all times; dangerous or threatening behavior towards city officials, employees, consultants, volunteers, or other members of the public;
  - b. Lawful use of city property by city employees and authorized visitors; or
  - c. City permitted activities.
5. No person shall refuse or fail to obey any reasonable direction of a person-in-charge of a city property. A direction of a person-in-charge is reasonable: if it directs a person to obey or to cease a violation of any law or regulation; if it is otherwise reasonably related to the protection of the health, welfare, and safety of the person or any other person at the city property, or to the prevention of damage to property; or if it is reasonably necessary to preserve the peace or to prevent the disruption of normal operations or administration of city business at city property, including, but not limited to, prohibiting members of the public from accessing areas of city administrative offices that are designated as employee only areas, prohibiting a person from engaging in an unlawful activity, removing a person from city property for engaging in dangerous or threatening behavior.
6. No person shall possess any object specifically designed for and presently capable of causing, or carried with the intent to threaten or cause, bodily harm to another. Objects prohibited under this paragraph include, but are not limited to, any firearm, pellet gun, spring-loaded weapon, stun gun or taser, any knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any knife with a blade longer than three and one-half inches, any dirk, dagger, ice pick, sling shot, slungshot, metal knuckles, nunchaku, studded hand coverings, swords, straight razors, tear gas, tear gas weapon, mace, pepper mace or similar deleterious agent, saps, sap gloves, hatchets or axes. The prohibitions of this paragraph do not apply to handguns lawfully carried. The prohibitions of this paragraph do not apply to any thing possessed or used to carry out actions authorized by any contract or permit at the city property.
7. No person shall smoke or carry any lighted smoking instrument on city property. Smoking instrument additionally includes an inhalant delivery system that delivers

- nicotine in the form of vapor or aerosol, and an electronic cigarette, personal vaporizer, or electronic nicotine delivery system. Smoking additionally includes inhaling or exhaling from a smoking instrument.
8. No person shall make use of facility materials, equipment, furniture, or fixtures of a city property in a manner inconsistent with their customary or designated uses, or in a manner likely to cause property damage or personal injury to the actor or others.
  9. No person shall interfere or obstruct free passage of city employees or authorized visitors in or on city property, including, but not limited to, placing objects that impede free passage.
  10. No person shall use city property for unauthorized storage of personal property or leave personal property unattended, including, but not limited to, bags, backpacks, tables, chairs, signs, and posters. Such items left unattended may be removed by persons-in-charge and stored by the city for no more than ninety days to allow the owner of such personal property to recover it.
  11. No person shall make or continue a noise disturbance or operate a sound producing device or sound producing equipment except as permitted by the property manager of the city property. Bullhorns and megaphones are not permitted in the interior of any building on city property.
  12. No person shall sell, distribute, or deliver any alcoholic beverage on city property, except as permitted by persons-in-charge, pursuant to an approved permit for use of city property, or as part of a city-sponsored event at which the vendor is allowed to sell alcoholic beverages.
  13. No person shall sell, distribute, or deliver any controlled substances on city property. This does not prohibit a person from providing caretaking functions or assisting another in taking legally prescribed medication. Controlled substance shall have the meaning provided in California Health and Safety Code Sections 11054 and 11055.
  14. No person may bring animals onto city property, or leave animals tethered to or unattended at city property, except as permitted by persons-in-charge. This does not preclude entry by service animals defined under the Americans with Disabilities Act while performing services or tasks the animals are trained to do, animals employed in official performance of police or rescue activities, or animals authorized for entry by persons-in-charge. The prohibition in this paragraph does not apply to city streets, sidewalks, paths, and parks where animals are not explicitly prohibited.
  15. No person shall solicit for or conduct business at city property except as permitted by persons-in-charge.
  16. No person shall use any wheeled devices, including, but not limited to, unicycles, bicycles, skateboards, roller skates, motorized or non-motorized scooters, on city property. All persons must dismount at city property boundary. No bicycles and motorized wheel devices are allowed in the interior of any building on city property except as permitted by persons-in-charge. The prohibition in this paragraph does not apply: (a) to persons with mobility devices for mobility disability or medical purposes,

child strollers or baby carriages used for the purpose of transporting children; or (b) on city streets, sidewalks, bicycle paths, and pedestrian paths where the use of wheeled devices is not explicitly prohibited.

17. No person shall use the city's technology system or network in a way that is explicitly prohibited or damage the city's technology systems or network, including its telecommunication equipment and data.
18. No person shall enter, attempt to enter or remain in any areas of city property for purposes other than to conduct legitimate business with city offices or tenants located at city property, to enjoy the publicly accessible amenities at a city property when the city property is open to the public, or to lawfully assemble for social or public interaction at portions of city property specifically designated for such assembly. The director of the department with property management responsibility for the city property may adopt space use policy to manage conditions for property use, including, but not limited to, establishing a reservation protocol, priority regarding uses and users, hours of use, and fees for use.

The director of the department with property management responsibility over a city property, or designee, is authorized to adopt additional rules of conduct for any specified city property managed by the department. The proposed additional rules of conduct shall be posted at the city property where such proposed rules would apply, and shall be deemed part of the rules of conduct for the city property. The proposed rules shall be final and effective no sooner than seven days after posting.

(Ord. 1650, 10/11/2023)

#### **§ 10.76.030. City property exclusions.**

- A. The exclusion procedures in this section shall be used for city property subject to the rules of conduct in Section 10.76.020.
- B. If a person violates any rule of conduct at city property described in Section 10.76.020 while in or upon city property, any person-in-charge may eject and direct the person to leave the city property for a period of twenty-four hours.
- C. For serious or egregious violations of the rules of conduct on areas of city property traditionally considered "limited" or "non-public" forums, such as city employee offices, a person-in-charge may issue an exclusion from the city property for any period of time up to one year.
- D. For serious or egregious violations of the rules of conduct on areas of city property traditionally considered "public" forums, such as streets, sidewalks, and parks, a person-in-charge may issue an exclusion from the city property for up to six months only after at least two violations within a six month period of time.
- E. In determining the appropriate length of exclusion under this section, the person-in-charge issuing the exclusion shall consider: the seriousness of the conduct that led to the exclusion; prior instances of violations of the rules of conduct at city property by the person to be excluded; the availability of alternative means for the person to conduct business with city

officials and offices; and any other facts or circumstances that the person-in-charge issuing the exclusion deems relevant.

- F. Prior to issuing an exclusion notice, the person-in-charge issuing the exclusion shall ensure that adequate alternative mechanisms exist for the individual to conduct business with the city, such as access to city services through the city's website, telephone or e-mail, or virtual access to city council meetings, including the ability to make comments via the platform providing virtual access. If no adequate alternative methods exist then a person-in-charge shall grant a limited modification to the exclusion notice for the purpose of conducting business with a city official, or office located on the city property identified in the exclusion notice; accessing city services; or attending a city council or other public meeting, unless such limited modification would pose a risk to the health and safety of others. If modification is issued, the person-in-charge may impose reasonable conditions for the limited entry, and may include a requirement that the person arrange with the person-in-charge to be escorted into and out of the location where the meeting is to be held or the business is to be conducted.
- G. The notice of exclusion shall be in writing, given to the person excluded and signed by the person-in-charge. It shall specify the dates and places of exclusion. It shall contain a warning of consequences for failure to comply with the notice of exclusion and information concerning the right to appeal the exclusion.
- H. A person receiving a notice of exclusion may appeal, in writing, to the city manager. The appeal to the city manager shall be filed with the city clerk within ten days of issuance of the notice of exclusion, unless extended by the city manager for good cause shown. The sworn statement of the person-in-charge who issued the notice of exclusion shall be used as evidence on appeal, unless the appellant requests, in writing, the presence of the person-in-charge at the appeal hearing.
- I. A person receiving a notice of exclusion may appeal the determination of the city manager to the city council in accordance with Chapter 1.28 of the South San Francisco Municipal Code.

(Ord. 1650, 10/11/2023)

**CITY COUNCIL  
PROCEDURES AND PROTOCOLS HANDBOOK**



**APPENDIX L**

**LEAGUE OF CALIFORNIA CITIES  
OPEN & PUBLIC VI  
A GUIDE TO THE RALPH M. BROWN ACT**



# Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024



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# Open & Public VI

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

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# Chapter 1

## IT IS THE PEOPLE’S BUSINESS

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# Chapter 1

## IT IS THE PEOPLE'S BUSINESS



### The right of access

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

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

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

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

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

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

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

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

### Broad coverage

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

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

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

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

### Narrow exemptions

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

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

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

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

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

### Public participation in meetings

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

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

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

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## Controversy

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

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

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

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

## Beyond the law — good business practices

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

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

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

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



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

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

### Achieving balance

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

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

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

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

### Historical note

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

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

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

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

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

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

### ENDNOTES

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



# Chapter 2

## LEGISLATIVE BODIES

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

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

# Chapter 2

## LEGISLATIVE BODIES

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



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

A “legislative body” includes the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ENDNOTES

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

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



# Chapter 3

## MEETINGS

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# Chapter 3

## MEETINGS



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

### Brown Act meetings

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

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

### Six exceptions to the meeting definition

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

#### *Individual contacts*

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

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

## Conferences

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

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

## Community meetings

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

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

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

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

### Other legislative bodies

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

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

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

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

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

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

### Standing committees

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

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

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

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

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

### **Social or ceremonial events**

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

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

### **Grand Jury Testimony**

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

### **Collective briefings**

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

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

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



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

### Serial meetings

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Informal gatherings**

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

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

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

### Technological conferencing

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

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

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



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

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

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

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

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

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



### Location of meetings

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

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

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

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

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

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

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

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

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

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

## ENDNOTES

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

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



# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



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

### Agendas for regular meetings

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

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

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

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

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

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

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

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

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

Are these descriptions adequate?

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

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

Is this permissible?

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

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

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

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

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



### Notice requirements for special meetings

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

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

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

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

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

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

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

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

## Notice requirements for emergency meetings

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

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

## Notice of compensation for simultaneous or serial meetings

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

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

## Educational agency meetings

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

## Notice requirements for tax or assessment meetings and hearings

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



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

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

### Non-agenda items

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

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

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

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

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

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

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

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

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

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

## Responding to the public

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

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



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

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

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

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

### The right to attend and observe meetings

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

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

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

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

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

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

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

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

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

## Records and recordings

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

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

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

A writing distributed during a meeting must be made public:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ENDNOTES

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



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



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# Chapter 5

## CLOSED SESSIONS

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



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

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

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

### Agendas and reports

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

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

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

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

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

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

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

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

## Litigation

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

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

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

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

### *Existing litigation*

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

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

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

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

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

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



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

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

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

### **Real estate negotiations**

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

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

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

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

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

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

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

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

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

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

## Public employment

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

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

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

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

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

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

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

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

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

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

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

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

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

## Labor negotiations

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

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

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

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

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

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

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

### Labor negotiations — school and community college districts

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

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

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

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

### Other Education Code exceptions

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

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

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

## Joint powers authorities

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

## License applicants with criminal records

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

## Public security

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

## Multijurisdictional law enforcement agency

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

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

## Hospital peer review and trade secrets

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

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



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

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

### Other legislative bases for closed session

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

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

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

### Who may attend closed sessions

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

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

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

## The confidentiality of closed session discussions

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

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

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

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

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

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

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

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

## ENDNOTES

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

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

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



# Chapter 6

## REMEDIES

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# Chapter 6

## REMEDIES



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

### Invalidation of action taken

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

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

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

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

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

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

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

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

### Civil action to prevent future violations

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

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

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

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

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

### Costs and attorney's fees

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

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

### Misdemeanor penalties

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

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

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

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

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

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

## Voluntary resolution

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

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



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

## ENDNOTES

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

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





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