Culver CITY

General Plan Update

General Plan Advisory Committee

Binder Materials

CITY OF CULVER CITY

General Plan Advisory Committee (GPAC) Binder Contents

- GPAC Meeting #1 Agenda
- GPAC Bylaws
- What is the GPU Factsheet (English and Spanish versions)
- Overall Project Schedule
- GPAC Meeting / Topic Schedule
- Culver City At a Glance Factsheet
- Maps
    - General Plan Land Use
    - Zoning
- OPR General Plan Guidelines – Chapter 1
- Brown Act Training Materials
- Culver City Planning Bibliography and Resources

General Plan Advisory Committee Open House
Meeting #1 Agenda
September 4, 2019 @ 6:30pm
Wende Museum, 10808 Culver Blvd., Culver City, CA 90230

Meeting Objectives

- Initiate the General Plan Advisory Committee, swear in members, and review the GPAC By-Laws
- Review GPAC organization and roles of members
- Hear an overview of the General Plan project

Agenda

1. Welcome Remarks (City) – 5 mins
2. Administer Oath of Office to Members of the GPAC (City) – 5 mins
3. Review GPAC Organization – 15 mins
    a. Committee member introductions and icebreaker
    b. Role and purpose of the committee
    c. Selection of regular meeting date and time
4. Overview of the General Plan Update (R+A) - 20 mins
    a. What is the General Plan?
    b. Major components of this project
    c. Our project team + our approach to the project
    d. Overview of the community engagement process + activities
    e. Looking ahead
    f. Review binder
5. Adjourn and networking

Questions?

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GENERAL PLAN UPDATE

What is the General Plan?

A general plan is a city's blueprint, or constitution, to guide change. It documents the city's long-range vision and establishes clear goals, objectives, and actions to help the community navigate the next 20 to 30 years of its evolution.

The City must update its General Plan periodically to respond to the changing needs and conditions of the city and region. It also should be updated to reflect new local, regional, state, and national laws.

State law requires that general plans address topics including land use, circulation, housing, conservation, open space, noise, and safety. General plans can also include optional topics – such as urban design, economic development, and sustainability – to reflect each community's distinct character, physical features, or needs.

Why is the City updating its General Plan?

Culver City's existing General Plan contains nine topics, or "elements," updated between 1968 and 2014 (see below). This will be the first time all elements are updated at the same time, aligning the entire Culver City General Plan with today's and tomorrow's community conditions and needs.

The City intends to create an innovative plan that is clear and useful to professionals and the public alike. Community stakeholders and City Council are already identifying new topics to include that address existing and emerging critical concerns.

These include sustainability, equity and social justice, healthy communities for all ages, climate adaptation and resiliency, urban design and public places, the economy, Ballona Creek, cultural planning, governance, and technology.

Who is part of the General Plan update?

All of Culver City is invited to collaborate in the process! The plan is relevant to all who live, work, play, and invest here. In addition to local residents, businesses and employees, community groups and nonprofits, developers, institutions, regional agencies and partners, schools, and many others will be invited to participate. All have a place and a valued voice in the update process.

The City Council, its appointed committees, and all City departments will be working together to lead the community through the General Plan update. Additionally, a creative and skilled consulting team will help ensure the highest quality outcome.

Updated as of 1/29/19

What does the General Plan Update process look like?

The City issued the General Plan Update (GPU) Services Request for Proposals for the project in April 2018 and received nine proposals. City staff and City Council's GPU Subcommittee reviewed and evaluated the proposals. Based on proposal scores, a panel of City staff joined by Mayor Small interviewed the four highest scoring teams in October 2018. Based on proposal and interview scores, City Council interviewed the two highest scoring teams at a Special Meeting on January 24, 2019. City Council unanimously selected the Raimi + Associates team to perform GPU services at their Regular Meeting on January 28, 2019. The public side of the project will kick off in Spring 2019 after City staff and the consultants complete a public engagement plan. The process of updating the General Plan itself is a collaborative, multi-year effort.

Sounds great! How can I get involved?

The City is committed to fostering public ownership of the General Plan and its roadmap for Culver City's future. The City and the consultant team will begin by preparing an engagement plan to bring the community together as collaborators in the process, with a goal of broad involvement – especially of those who are too often left out of planning processes. As we work toward that engagement plan, listening to the community is our highest priority.

We look forward to hearing from you!

Submit your comments and ideas at:

www.culvercity.org/generalplan

ACTUALIZACIÓN DEL PLAN GENERAL

Qué es el Plan General?

Un plan general es el plan o constitución de una ciudad para guiar el cambio. Documenta la visión a largo plazo de la ciudad y establece metas claras, objetivos y acciones para ayudar a la comunidad a navegar los próximos 20 a 30 años de su evolución.

La Ciudad debe actualizar su Plan General periódicamente para responder a las necesidades y condiciones cambiantes de la ciudad y la región. También debe actualizarse para reflejar las nuevas leyes locales, regionales, estatales y nacionales.

La ley estatal requiere que los planes generales aborden temas como el uso del terreno, la circulación, la vivienda, la conservación, el espacio abierto, el ruido y la seguridad. Los planes generales también pueden incluir temas opcionales, como el diseño urbano, el desarrollo económico y la sostenibilidad, para reflejar el carácter distintivo, las características físicas, o las necesidades de cada comunidad.

¿Por qué la Ciudad está actualizando su Plan General?

El Plan General existente de Culver City contiene nueve temas, o "elementos", actualizados entre 1968 y 2014 (ver a continuación). Esta será la primera vez que se actualicen todos los elementos al mismo tiempo, alineando todo el Plan General de Culver City con las condiciones y necesidades de la comunidad de hoy y de mañana.

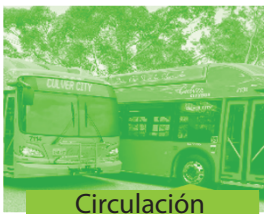
La Ciudad tiene la intención de crear un plan innovador que sea claro y útil para los profesionales al igual que al público en general. Las partes interesadas de la comunidad y el Concejo Municipal ya están identificando nuevos temas para incluir, que abordan las preocupaciones críticas existentes y emergentes.

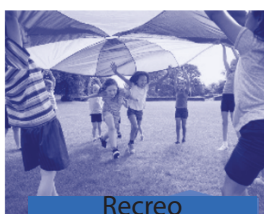
Estos incluyen sostenibilidad, equidad y justicia social, comunidades saludables para todas las edades, adaptación y resiliencia climática, diseño urbano y lugares públicos, economía, Ballona Creek, planificación cultural, gobernabilidad, y tecnología.

¿Quién es parte de la actualización del Plan General?

¡Todos los de Culver City están invitados a colaborar en el proceso! El plan es relevante para todos los que viven, trabajan, juegan e invierten aquí. Además de los residentes locales, empresas y empleados, grupos comunitarios y sin fines de lucro, promotores, entidades, los organismos regionales y los asociados, escuelas y muchos otros serán invitados a participar. Todos tienen un lugar y una voz valiosa en el proceso de actualización.

El Concejo Municipal, sus comités designados y todos los departamentos de la Ciudad trabajarán juntos para liderar a la comunidad a través de la actualización del Plan General. Además, un equipo de consultoría creativo y experto ayudará a garantizar el resultado de mayor calidad.





Actualizado a partir de 2/28/19

¿Cómo se ve el proceso de Actualización del Plan General?

La Ciudad emitió la Solicitud de Propuestas para el proyecto en abril de 2018 y recibió nueve propuestas. El personal de la Ciudad y el Subcomité de GPU del Consejo Municipal revisaron y evaluaron las propuestas. Basado en el puntaje de las propuestas, un panel de personal de la Ciudad en conjunto con el alcalde Small entrevistó a los cuatro equipos con la puntación más alta en Octubre de 2018. Basado en el puntaje de las propuestas y las entrevistas, el Consejo Municipal entrevistó a los dos equipos con la puntación más alta durante una reunión especial el 24 de enero de 2019. El Consejo Municipal seleccionó por unanimidad al equipo de Raimi + Associates para realizar servicios de la GPU en su reunión regular del 28 de enero de 2019. La parte pública del proyecto se iniciará en la primavera del 2019 después que el personal de la Ciudad y los consultores completen un plan de compromiso público. El proceso de actualización del Plan General en sí mismo es un esfuerzo colaborativo y multianual.

¡Suena genial! ¿Cómo puedo involucrarme?

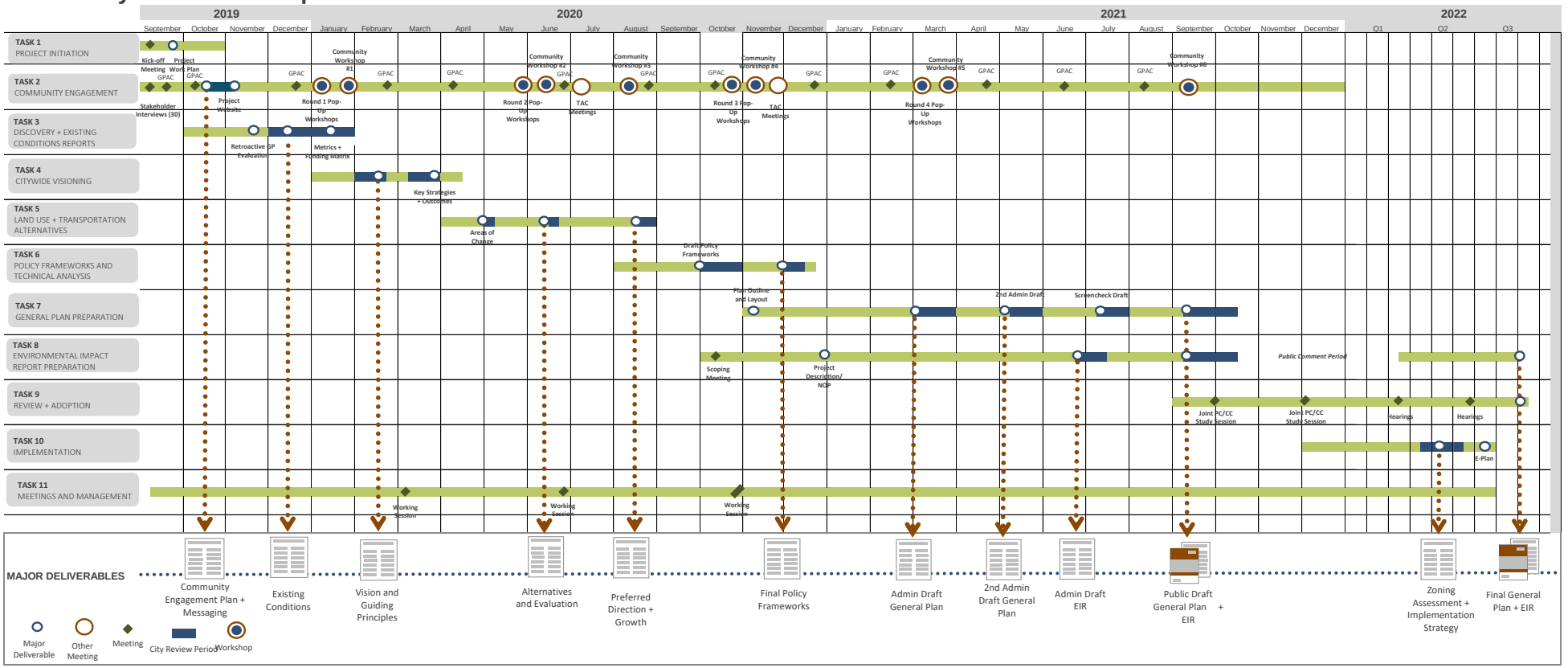
La Ciudad está comprometida fomentar la propiedad pública del Plan General y su mapa de ruta para el futuro de Culver City. La ciudad y el equipo de consultores comenzarán preparando un plan de participación para reunir a la comunidad como colaboradores en el proceso, con el objetivo de una amplia participación, especialmente de aquellos a los que con demasiada frecuencia se les deja fuera de los procesos de planificación. Mientras trabajamos para lograr ese plan de participación, nuestra principal prioridad es escuchar a la comunidad.

¡Esperamos con interés escuchar de usted!

Envíe sus comentarios e ideas a:

www.culvercity.org/generalplan

Culver City General Plan Update



General Plan Advisory Committee
Draft Meeting and Topic Schedule
August 2019

Meeting #1 – September 2019

- Initiate the General Plan Advisory Committee, swear in members, and review the GPAC By-Laws
- Review GPAC organization and roles of members
- Hear an overview of the General Plan project

Meeting #2 – October 2019

- Review Community Engagement Plan
- Discuss Project Ambassadors
- Discuss Key Issues and Opportunities

Meeting #3 – November 2019

- Review Community Visioning Workshops
- Review Draft Engagement Toolkit

Meeting #4 – January 2020

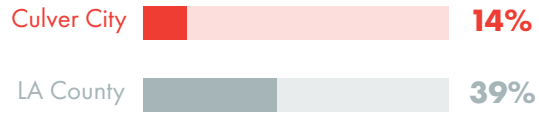
- Review Visioning Workshop and Pop-Up Meeting Results
- Review Vision and Guiding Principles, Plan Targets, and Outcomes
- Discuss Neighborhoods, Districts, and Corridors Approach and Areas of Land Use Change and Stability

Meeting #5 – Land Use and Mobility Alternatives, Land Use and Urban Design
Meeting #6 –Economic Development
Meeting #7 – Arts and Culture
Meeting #8 – Mobility and Transportation
Meeting #9 –Sustainability and Climate Change, Community Health, and Social Equity
Meeting #10 – Parks and Open Space
Meeting #11 – Infrastructure and Smart City
Meeting #12 – Draft General Plan Review

CULVER CITY
AT-A-GLANCE

ECONOMICS

Residents in Poverty (200% FPL)



Median Property Value

$675,800 Culver City

$537,900 LA County

CREATIVE ECONOMY

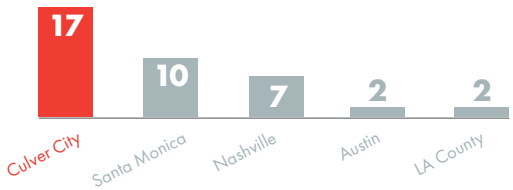
Creative Industries Employment

14% Culver City

10% LA County

669 creative industries in Culver City

Creative Vitality Index



HEALTH

Available Recreational Space
(Acres per 1,000 Population)

2.78 Culver City

8.10 LA County

Serious Crime

	Culver City	LA County
Serious Crimes (Per 100,000 population)	**527.9**	**551.0**

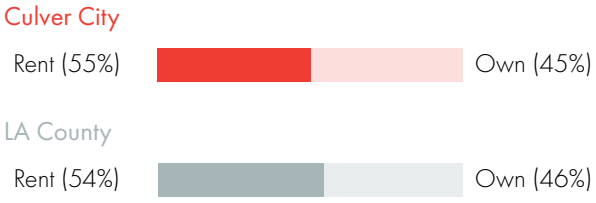
Average Commute Time

24.2 Culver City

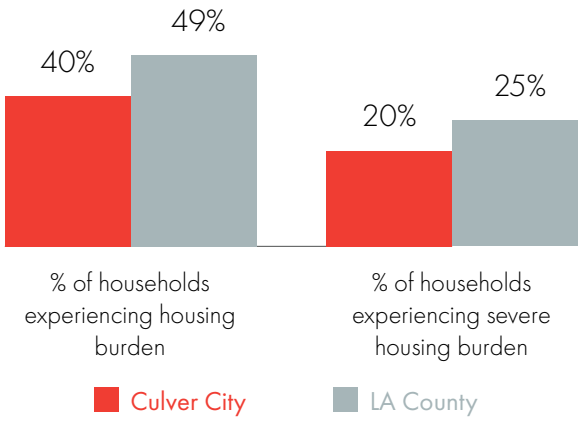
29.9 LA County

HOUSING

Household Ownership



Burdened Households



CULVER CITY
AT-A-GLANCE

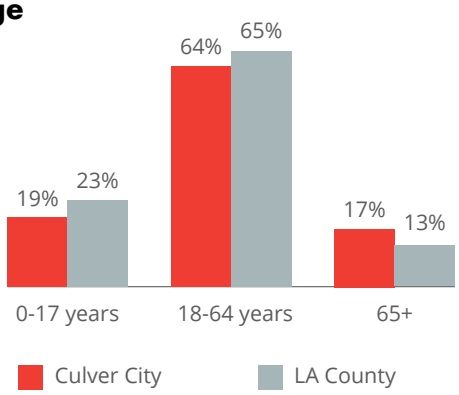
DEMOGRAPHICS

Population

2016 **40,351**

2000 **38,879**

Age



Household Size

2.4 2016

2.2 2000

Households with Limited English

5% Culver City

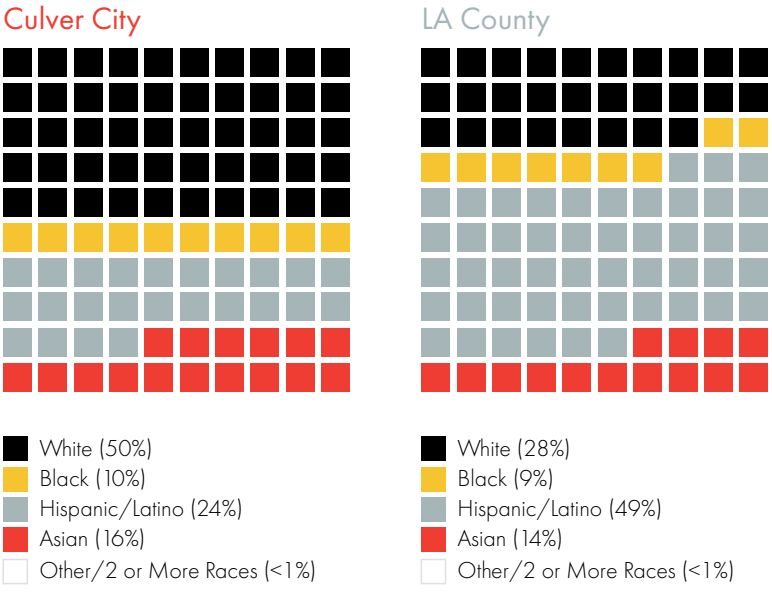
14% LA County

Median Age

41 Culver City

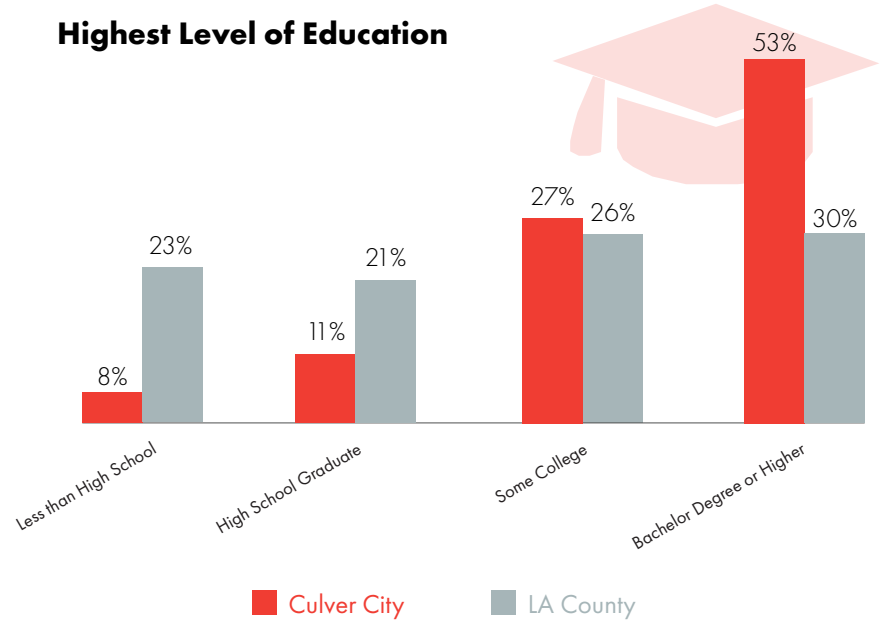
36 LA County

Race / Ethnicity



EDUCATION

Highest Level of Education



City of

Culver CITY

GENERAL PLAN LAND USE ELEMENT MAP

Residential

- Low Density Single Family
- Low Density Two Family
- Low Density Three Family
- Low Density Multiple Family
- Medium Density Multiple Family
- Planned Residential Development

Commercial

- Neighborhood Serving Corridor
- General Corridor
- Downtown
- Community Serving Center
- Regional Center

Industrial

- Light Industrial
- Industrial Park
- Industrial

Focused Special Studies Area

- Hayden Industrial Tract
- Blair Hills / Baldwin Hills
- Ballona Creek

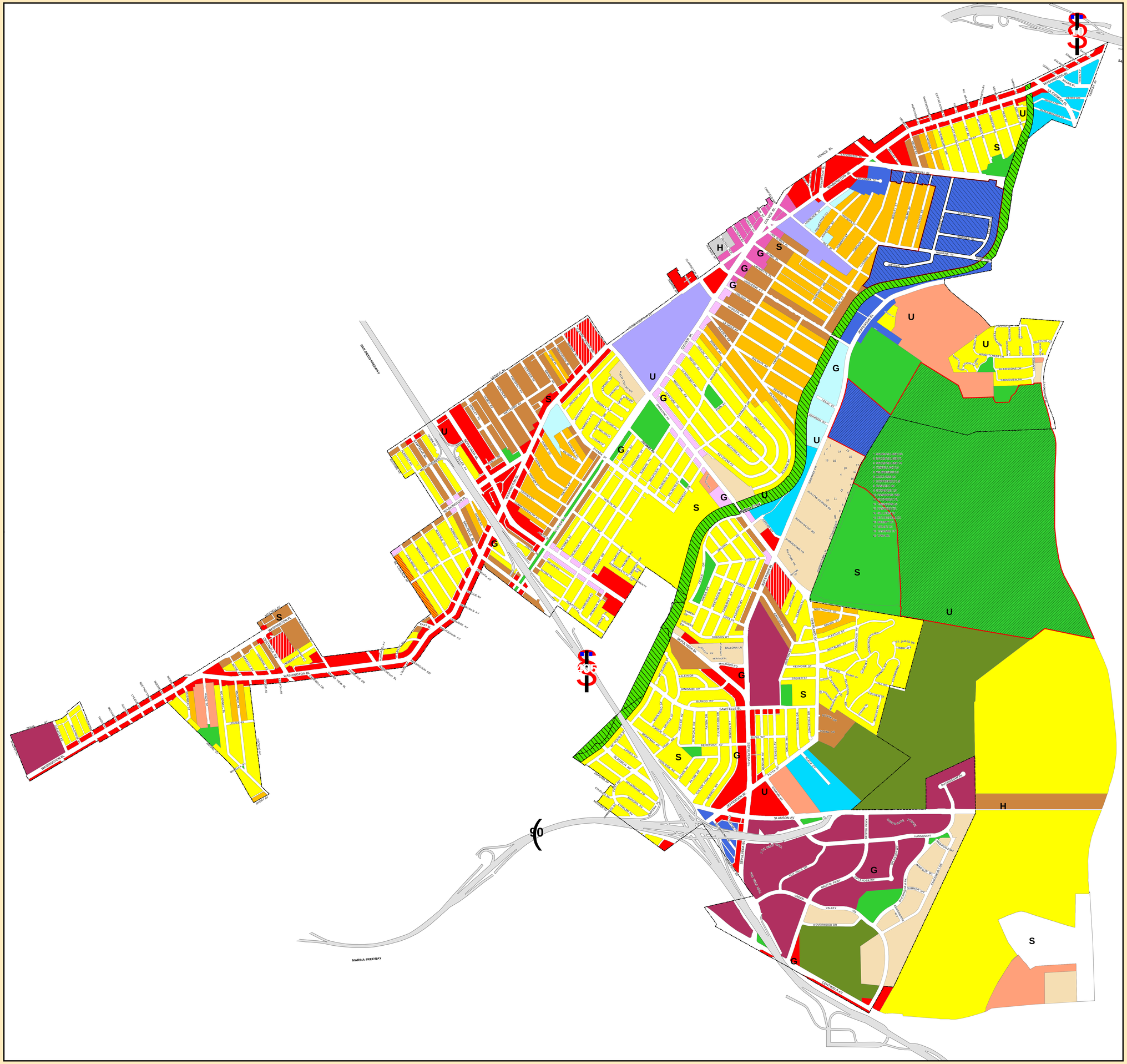
Other

- Studio
- Cemetery
- Open Space
- Institutional
- School
- City Boundary
- Freeway

G Government
S School
U Utility
H Health Center

INFORMATION TECHNOLOGY DEPARTMENT
GEOGRAPHIC INFORMATION SYSTEMS
9770 CULVER BLVD
CULVER CITY, CA 90232
TEL: 310-253-5950

August 28, 2007



City of

Culver CITY

ZONING MAP

*This Zoning Map has been updated per adoption of City Council Resolution No. 2005-007 dated October 24, 2005.

- **CN** *Commercial Neighborhood*
- **CG** *Commercial General*
- **CC** *Commercial Community*
- **CD** *Commercial Downtown*
- **CRR** *Commercial Regional Retail*
- **CRB** *Commercial Regional Business Park*
- **R1** *Residential Single Family*
- **R2** *Residential Two Family*
- **R3** *Residential Three Family*
- **RLD** *Residential Low Density Multiple*
- **RMD** *Residential Medium Density Multiple*
- **RHD** *Residential High Density Multiple*
- **PD** *Planned Development*
- **IL** *Industrial Light*
- **IG** *Industrial General*
- **S** *Studio*
- **E** *Cemetery*
- **OS** *Open Space*
- **T** *Transportation*
- *Commercial Zero Setback Overlay*
- *Overlay Zone Boundary*
- *City Boundary*
- *Ballona Creek*
- **P** *Culver City Park*
- **S** *School*

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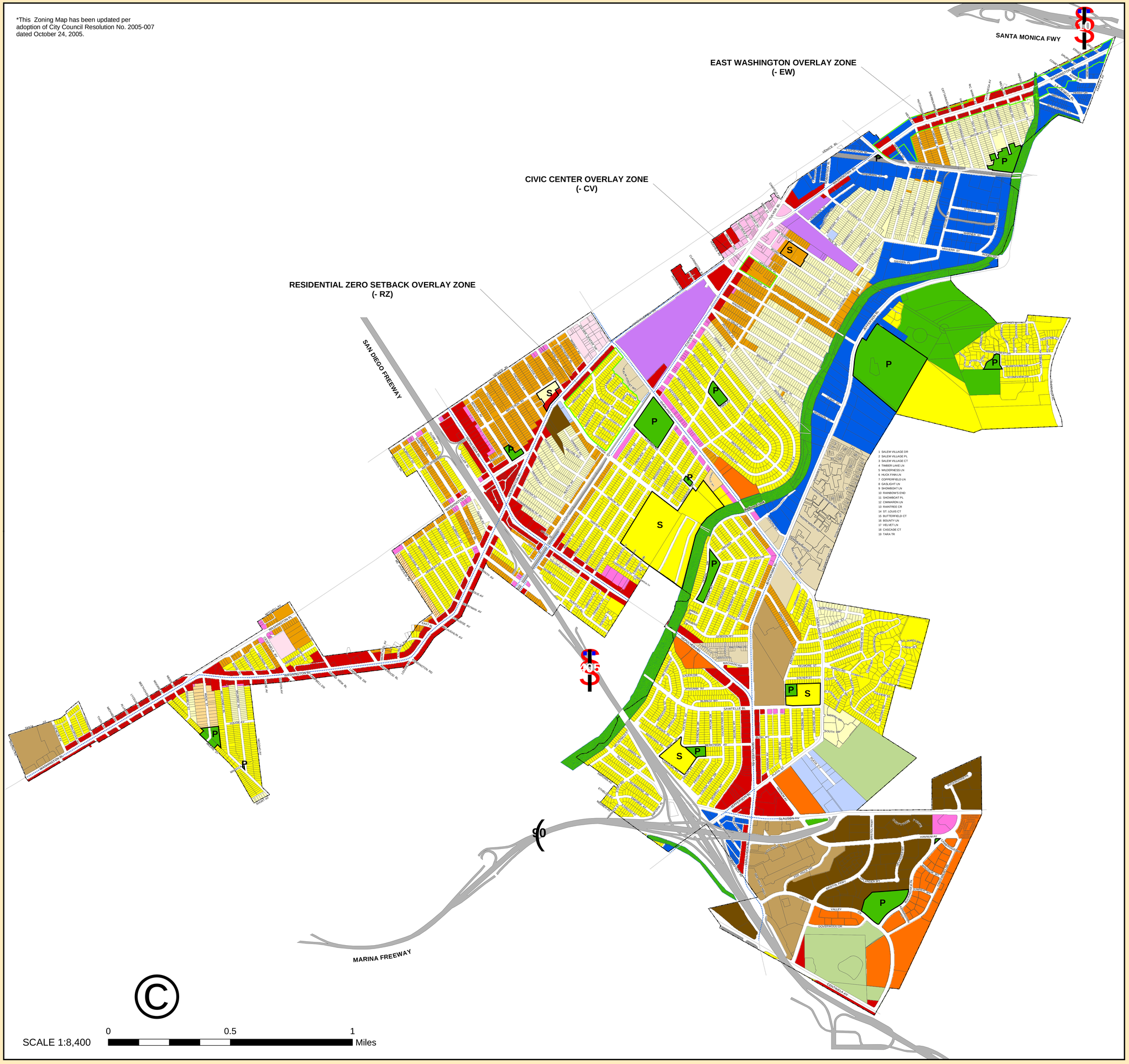

STATE OF CALIFORNIA

General Plan Guidelines

2017

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

CHAPTER 1: INTRODUCTION

1

Introduction

Planning Healthy, Equitable, Resilient, and Economically Vibrant Places

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"By far the greatest and most admirable form of wisdom is that needed to plan and beautify cities and human communities."

—Socrates

The general plan is more than the legal underpinning for land use decisions; it is a vision about how a community will grow, reflecting community priorities and values while shaping the future. To assist local governments in preparing general plans and the public in participating in that process, the Governor's Office of Planning and Research (OPR) periodically revises guidelines for the preparation and content of local general plans (Gov. Code § 65040.2).

This 2017 edition of the General Plan Guidelines (GPG) contains significant changes to the 2003 General Plan Guidelines. For mandatory and common optional elements of the general plan, the GPG sets out each statutory requirement in detail, provides OPR recommended policy language, and includes online links to city and county general plans that have adopted similar policies. Each chapter contains a sample selection of policies. Users can also click the links provided for more detailed policies and plans. All of the referenced policies as well as additional policies are compiled in Appendix A. For ease of use, the new GPG is text–searchable, and provides sample policy language for local governments to use or adapt. The update contains new resources and templates for cities and counties to use in considering themes, structures, and policies for their general plans, including new compendiums on infill development, renewable energy, and mitigation for conversion of agricultural land. As more resources and data sources become available, they will be added and linked to these General Plan Guidelines. The new online platform will allow OPR to add updated text, links, and information directly to the GPG, and announce any additions through the GPG listserv and on the OPR website. The GPG is a resource to help planners accomplish their respective community's priorities and vision while meeting larger state goals, increasing community collaboration, and potentially improving competitiveness for funding opportunities.

As of 2015, more than half of local jurisdictions have general plans that are over 15 years old. Often, this is because the process of adopting a general plan has become too time–consuming and costly. In order to streamline the process and reduce costs, this comprehensive update of OPR's GPG provides free online tools and resources, promotes increased use of online data, and includes templates, sample policies, and links to more information. The General Plan Mapping Tool draws data sets from multiple sources, allowing users to incorporate local, regional, and statewide data into local general plans. Local jurisdictions may pull from and modify provided policies and templates, analyze consistent data through the tool, and craft general plans at a lower cost and with less uncertainty. These new resources will increase efficiencies in the development of general plan updates

1

NEW in the 2017 *General Plan Guidelines* suite of tools:

- Updated and expanded sections on visioning and community engagement
- New sections on healthy communities, equitable and resilient communities, economic development, and climate change
- GPG Mapping Tool, enabling free, easy access to helpful data for cities and counties
- Links to additional online tools and resources
- Recommended policies in cut and paste format, with examples of adopted policy language
- Reformatted sections on the mandatory elements, including a new section on environmental justice
- Expanded equity and environmental justice section
- Infill compendium
- Renewable energy compendium
- Model template for mitigation of agricultural land conversion

for communities of all sizes throughout the state.

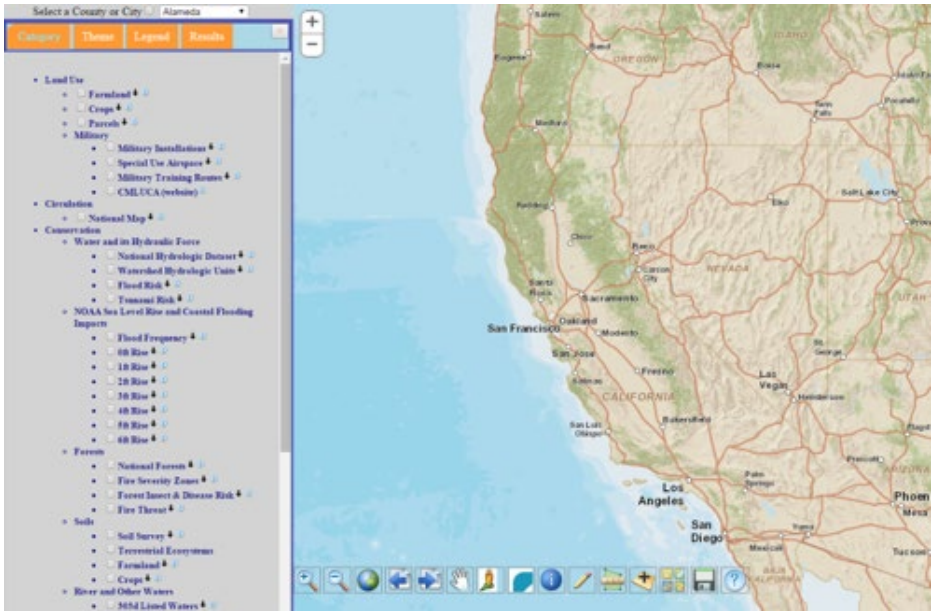
The term "element" refers to the topics that California law requires to be covered in a general plan (Gov. Code § 65302). There is no mandatory structure or maximum number of elements that a general plan must include. Once added into the general plan, each element, regardless of statutory requirement, assumes the same legal standing, and must be consistent with other elements (Gov. Code § 65300.5). The general plan is the perfect space for innovation, reflecting the unique character of each community. The format and content of general plans can vary between jurisdictions. Planners must address

Figure 1: Examples of General Plan Layout

mandatory elements, but they have discretion to organize general plans by values (core concepts that the community wants to enhance or uphold), themes (overarching issues identified by the community as important), challenges or goals identified through community engagement, or even by the elements themselves. Cities and counties may create new models of organizing their general plans, based on the needs and priorities identified during public engagement. Riverside County, for example, included a healthy communities element in its general plan update. The City of Fullerton structured its general plan around four focus areas, identified through community engagement, and addressed all of the elements through those focus areas. The City of Sacramento framed its general plan around sustainability and livable communities, and focused each of the required elements – as well as additional elements – around those goals. The County of Marin created a separate, easy to read summary of its 2007 countywide plan, featuring model strategies and metrics related to climate change, social equity, and other themes. OPR designed the GPG to assist every city and county in accordance with its local jurisdiction's unique vision, using whatever structure best achieves the goals of the community.

The 2017 GPG update includes a free General Plan Mapping Tool. The tool incorporates the requirements for the mandatory elements as well as themes and provides Geographic Information Systems (GIS) resources for city and county planners to use when drafting a general plan.
The tool provides access to data (varying as available from county, city, and parcel–level information) to help inform decision–making processes and enhance public participation. The mapping tool uses a platform specifically designed for general plans.

Figure 2: The General Plan Mapping Tool



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Recommendations and Sample Language

OPR has included recommendations and sample policy language to provide cities and counties with information, data, examples, and ideas to consider in their general plan. These recommendations may not fit the needs of every city and county or every circumstance. Rather, these recommendations represent a toolbox of options, allowing jurisdictions to use them as they are, modify them as appropriate within statutory requirements, or consider them as examples to inform their own policies.

According to state law,

> "Decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan, and should proceed within the framework of officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors." (Gov Code § 65030.1)

The following text box describes the statutory state planning priorities of the Governor's Office of Planning and Research Environmental Goals and Policy Report, as they appear in Government Code section 65041.1. The GPG aims to help achieve goals consistent with both documents by recommending practices and policies for cities and counties to incorporate locally.

STATE PLANNING PRIORITIES

California Government Code section 65041.1

The state planning priorities, which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities, shall be as follows:

(a) To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources.

(b) To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection.

(c) To encourage efficient development patterns by ensuring that any infrastructure associated with development, other than infill development, supports new development that does all of the following:

(1) Uses land efficiently.

(2) Is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b).

(3) Is located in an area appropriately planned for growth.

(4) Is served by adequate transportation and other essential utilities and services.

(5) Minimizes ongoing costs to taxpayers.

This GPG document is advisory. Nevertheless, courts periodically refer to the GPG to interpret planning law. For this reason, the GPG closely adheres to statute and current case law. It also relies upon commonly accepted principles of contemporary planning practice. The following words are used to indicate whether a particular subject in the GPG is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory statutory requirement that all public agencies are required to follow.

(b) "Should" or "suggest(ed)" identifies guidance provided by OPR based on policy considerations contained in California's planning laws.

(c) "May" or "can (could)" identifies a permissive recommendation that is left fully to the discretion of the local governments involved.

OPR updated the GPG in coordination with a number of other tool, policy, and program update efforts to ensure references to external tools support the intent of the GPG. Some examples of these concurrent updates include the following:

- AB 32 Scoping Plan Update
- Cal–Adapt
- California Climate Adaptation Planning Guide
- California Coastal Commission Local Coastal Plan guidance
- California State Energy Efficiency Collaborative GHG and climate tools
- General Plan Mapping Tool
- Safeguarding California Plan
- State Hazard Mitigation Plan
- SB 244(2011), SB 743(2013), SB 379(2015), SB 1000(2016)
- California Statewide Housing Assessment
- California State Wellness Plan

- California Strategic Growth Council
- California Water Plan
- CEQA Guidelines Update
- Cool California and the Funding Wizard
- Environmental Goals and Policy Report

The GPG also includes new sections on environmental justice, healthy communities, equity and resilience, economic development, and climate change; as well as compendiums on infill development, renewable energy, and agricultural land conservation.

How to Use These Guidelines

The General Plan Guidelines are intended to be user friendly and practical for planners, decision makers, and the general public. The GPG and the General Plan Mapping Tool can be used to frame conversations around planning, evaluate data and identify priorities, research formats and policies from similar communities, and enhance capacity for fiscally constrained departments and organizations working to update general plans. Each chapter of the GPG lays out the requirements contained in statute, connections to other requirements, additional considerations, and related data and policies to consider. Each mandatory element also includes a completeness checklist to assist communities in meeting statutory requirements. Recognizing the vast diversity of California's communities in size, demographics, geography, economics, and resources, the GPG present examples in various jurisdictions whenever possible.

Statutory Requirements

This document provides textboxes containing the statutory language that creates a legal obligation to address each of the required elements in a general plan. These textboxes can be found in the chapters corresponding to each of the elements. The information following the statutory language contains OPR's recommendations for meeting the requirement. Each statutory reference is hyperlinked to the full text of the Government Code for easy access.

Requirement Description

This section includes considerations, resources, data, and other information for developing general plan policies. Many elements are interrelated, so tables in each requirement description section note linkages between elements. This section also includes additional information through hyperlinks, which lead to examples and resources.

Recommended Data

Each section also includes recommendations for data that jurisdictions may wish to use to examine and determine specific needs and policies. Tables identify the data according to the potential intent of analysis. Where the recommended data is available, tables provide direct links to the General Plan Mapping Tool. As the GPG is reviewed and updated, additional data links will be added. Because the same data may be useful for multiple analytical purposes, some data link to multiple sections of the guidelines. The recommended data are not exhaustive but can serve as a starting point for considering the specific needs of a community and for identifying further information needed to help inform decisions related to those needs.

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Parts of a General Plan

(for more detailed descriptions and examples, see Appendix E)

Development Policy – a general plan statement that guides action, including goals and objectives, principles, policies, standards, and plan proposals.

Diagram – a graphic expression of a general plan's development policies, particularly its plan proposals, which must be consistent with the general plan text (Gov Code § 65300.5).

Goal – a general expression of community values and direction, expressed as ends (not actions).

Objective – a specified end, condition, or state that is a measurable intermediate step toward attaining a goal.

Principle – an assumption, fundamental rule, or doctrine guiding general plan policies, proposals, standards, and implementation measures.

Policy – a specific statement that guides decision–making and helps implement a general plan's vision.

Standards – a rule or measure establishing a level of quality or quantity that must be complied with or satisfied.

Plan Proposal – describes the development intended to take place in an area. Plan proposals are often expressed on the general plan diagram.

Implementation Measure – an action, procedure, program, or technique that carries out general plan policy. Each policy should have at least one corresponding implementation measure.

Recommended Policies

The government code directs OPR to provide land use policy advice. In order to do so, the GPG includes both general plan policy recommendations and links to external resources that provide policy guidance. Where possible, links are provided to the sample policies, case studies, and external reports.

Adopted state programs described in the draft Environmental Goals and Policy Report – an overview of the state's environmental goals and the key steps needed to achieve them – provide the basis for many of the policy recommendations. OPR also examined current academic publications and conducted extensive outreach to local governments, community, and advocacy groups in building policy recommendations. Cross–cutting recommendations include consideration of equity, health, and climate issues within jurisdictions,communities, and regions. With thoughtful planning based on such considerations, California will foster a future that has a strong economy, thriving built and natural environments, and a healthy, prosperous citizenry.

GPG policy recommendations focus on four key themes.

1. Climate Change: In California, climate change has been the subject of multiple Executive Orders and legislation. It is a high priority subject for any general plan update. EO B-30-15 established interim emissions reduction targets for 2030; EO S-03-05 established long–term targets for 2020 and 2050; and EO S-13-08 established climate change adaptation and resilience as

a priority. Further state goals include reduction of petroleum use by up to 50 percent by 2030, and an increase of renewable energy to 50 percent by 2030 through the Clean Energy and Pollution Reduction Act of 2016. California has set greenhouse gas (GHG) emissions reduction requirements in numerous sectors including land use and transportation planning (Assembly Bill 32, the Global Warming Solutions Act of 2006 (Nunez), hereafter referred to as AB 32; Senate Bill 375, the Sustainable Communities and Climate Protection Act of 2008 (Steinberg), hereafter referred to as SB 375; Senate Bill 743, the Transit Oriented Development Act of 2013 (Steinberg), hereafter referred to as SB 743). The AB 32 Scoping Plan includes sections on local government and the importance of local action to help achieve statewide climate goals. Additionally, the Safeguarding California Plan, Cal-Adapt, Climate Change Handbook for Regional Water Planning, and the California Climate Adaptation Planning Guide provide guidance for resilience and adaptation efforts. OPR's GPG recommendations focus on how the general plan can achieve GHG emissions reductions, increase resiliency to climate change impacts, and lead to healthier and more prosperous communities.

2. **Economics**: Policies related to all elements of the general plan greatly affect economic opportunity, development, and stability. Decisions regarding land use and circulation have direct and indirect fiscal implications for local economies, and, in turn, economies of urban and rural centers affect the health, climate, and equity of communities. As with all general plan topics, even if addressed in a separate section, economic development must link and integrate with other elements in order to be successful.

3. **Healthy Communities**: In 2012 the Governor issued Executive Order B-19-12 and created the Governor's Let's Get Healthy California Task Force. Chronic disease, such as obesity, diabetes, cancer, heart disease, and asthma affect quality of life and productivity. In addition, social, economic, and environmental factors where people live, work, and play affect their health and well–being. The Task Force identified the creation and expansion of healthy communities to be one of three major focus areas for the promotion of overall health improvement. Because

A general plan allows a community to envision its future growth and development

Image by Urban Advantage, Ferrell Madden Lewis

planning offers one important way to improve the community's health, OPR offers recommendations for jurisdictions interested in incorporating health–supporting policies into their general plan.

4. **Equitable Opportunities**: Planning decisions affect the entire community, and the entire community must be allowed equal access to the public process (Gov Code § 11135). From determining proximity to localized noise or air pollution, to providing healthy grocery options, to creating access to employment and education opportunity, planning and policy affect everyone. Incorporating equity into all aspects of planning will ensure that residents of a city or county benefit from reduced GHG emissions, climate change adaptation policies, active transportation options, and healthy communities with access to economic opportunity for all. OPR's recommendations for equity incorporate statutory requirements for environmental justice guidance (Gov Code § 65040.12(c)) into an expanded focus on equity throughout the general plan.

Additionally, based on statewide goals, the update includes model guides and best practices related to infill development, renewable energy, and mitigation of agricultural land conversion.

Readers should note that the recommended policies are simply recommendations, intended to provide a starting point from which local governments can craft unique policies reflecting the priorities and circumstances of their communities. The GPG aims to create a suite of tools for communities to utilize in updating their general plans. By providing information, resources, and data on statutory requirements as well as non–statutory considerations relevant to planning, the GPG can help diverse community members work together towards a shared vision for their future growth.

BROWN ACT
CONFLICT OF INTEREST REGULATIONS
AND MEETING PROCEDURES
MATERIALS

For questions, contact Heather Baker, Assistant City Attorney at heather.baker@culvercity.org or 310-253-5660.

SUMMARY OF THE MAJOR PROVISIONS AND REQUIREMENTS OF THE RALPH M. BROWN ACT

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The Ralph M. Brown Act is California's "sunshine" law for local government. It is found in the California Government Code beginning at Section 54950. In a nutshell, it requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can keep control over their government.

A. Application of the Brown Act to "Legislative Bodies"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council) and any commission, committee, board or other body of the local agency, whether permanent or temporary, decision-making or advisory, that is created by formal action of a legislative body (Section 54952).

Standing committees of a legislative body, which consist solely of less than a quorum of the body, are subject to the requirements of the Act. Some common examples include the finance, personnel, or similar policy subcommittees of the city council or other city legislative body that have either some "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body. Standing committees exist to make routine and regular recommendations on a specific subject matter, they survive resolution of any one issue or matter, and are a regular part of the governmental structure.

The Brown Act does not apply to *ad hoc* committees consisting solely of less than a quorum of the legislative body, provided they are composed solely of members of the legislative body and provided that these ad hoc committees do not have some "continuing subject matter jurisdiction," and do not have a meeting schedule fixed by formal action of a legislative body. Thus, ad hoc committees would generally serve only a limited or single purpose, they are not perpetual and they are dissolved when their specific task is completed.

Standing committees may, but are not required to, have regular meeting schedules. Even if such a committee does not have a regular meeting schedule, its agendas should be posted at least 72 hours in advance of the meeting (Section 54954.2). If this is done, the meeting is considered to be a regular meeting for all purposes. If not, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply.

The governing boards of private entities are subject to the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the public agency, or (ii) the private entity receives funds from the local agency and the private entity's governing body includes a member of the legislative body who was appointed by the legislative body (Section 54952).

The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency who have not yet assumed the duties of office (Section 54952.1). Under this provision, the Brown Act is applicable to newly elected, but not-yet-sworn-in councilmembers.

B. Meetings

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act definition of the term "meeting" (Section 54952.2) is a very broad definition that encompasses almost every gathering of a majority of Council members and includes:

> "Any congregation of a majority of members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."

In plain English, this means that a meeting is any gathering of a majority of members to hear *or* discuss any item of city business or potential city business.

There are six specific types of gatherings that are *not* subject to the Brown Act. We refer to the exceptions as: (1) the individual contact exception; (2) the seminar and conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of members falls within one of the exceptions discussed below, if a majority of members are in the same room and *merely listen* to a discussion of city business, then they will be participating in a Brown Act meeting that requires notice, an agenda, and a period for public comment.

1. The individual contact exception

Conversations, whether in person, by telephone or other means, between a member of a legislative body and any other person do not constitute a meeting (Section 54952.2(c)(1)). However, such contacts may constitute a "serial meeting" in violation of the Brown Act if the individual also makes a series of individual contacts with other members of the legislative body serving as an intermediary among them. An explanation of what constitutes a "serial meeting" follows below.

2. The seminar and conference exception

The attendance by a majority of members at a seminar or conference or similar educational gathering is also generally exempt from Brown Act requirements (Section 54952.2 (c)(2)). This exception, for example, would apply to attendance at a California League of Cities seminar. However, in order to qualify under this exception, the seminar or conference must be open to the public and be limited to issues of general interest to the public or to cities. Finally, this exception will not apply to a conference or seminar if a majority of members discuss among themselves items of specific business relating to their own city, except as part of the program.

3. The community meeting exception

The community meeting exception allows members to attend neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings sponsored by an organization other than the city at which issues of local interest are discussed (Section 54952.2(c)(3)). However, members must observe several rules that limit this exception. First, in order to fall within this exception, the community meeting must be "open and publicized." Therefore, for example, attendance by a majority of a body at a homeowners association meeting that is limited to the residents of a particular development and only publicized among members of that development would not qualify for this exemption. Also, as with the other exceptions, a majority of members cannot discuss among themselves items of city business, except as part of the program.

4. The other legislative body exception

This exception allows a majority of members of any legislative body to attend meetings of other legislative bodies of the city or of another jurisdiction (such as the county or another city) without treating such attendance as a meeting of the body (Section 54952.2(c)(4)). Of course, as with other meeting exceptions, the members are prohibited from discussing city business among themselves except as part of the scheduled meeting.

5. The social or ceremonial occasion exception

As has always been the case, Brown Act requirements do not apply to attendance by a majority of members at a purely social or ceremonial occasion provided that a majority of members do not discuss among themselves matters of public business (Section 54942.2(c)(5)).

6. The standing committee exception

This exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the standing committee without making the gathering a meeting of the full legislative body itself. The exception is only applicable if the attendance of the members of the legislative body who are not standing committee members would create a gathering of a majority of the legislative body; if not, then there is no "meeting." If their attendance does establish a quorum of the parent legislative body, the members of the legislative body who are not members of the standing committee may only attend as “observers” (Section 54952.2(c)(6)). This means that members of the legislative body who are not members of the standing committee should not speak at the meeting, sit in their usual seat on the dias or otherwise participate in the standing committee's meeting.

With a very few exceptions, all meetings of a legislative body must occur within the boundaries of the local governmental agency (Section 54954). Exceptions to this rule which allow the City Council to meet outside the City include meeting outside the jurisdiction to comply with a court order or attend a judicial proceeding, to inspect real or personal property, to attend a meeting with another legislative body in that other body's jurisdiction, to meet with a state or federal representative to discuss issues affecting the local agency over which the other officials have jurisdiction, to meet in a facility outside of, but owned by, the local agency, or to visit the office of the local agency's legal counsel for an authorized closed session. These are meetings and in all other respects must comply with agenda and notice requirements.

“Teleconferencing” may be used as a method for conducting meetings whereby members of the body may be counted towards a quorum and participate fully in the meeting from remote locations (Section 54953(b)). The following requirements apply: the remote locations may be connected to the main meeting location by telephone, video or both; the notice and agenda of the meeting must identify the remote locations; the remote locations must be posted and accessible to the public; all votes must be by roll call; and the meeting must in all respects comply with the Act, including participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. No person can compel the legislative body to allow remote participation. The teleconferencing rules only apply

to members of the legislative body; they do not apply to staff members, attorneys or consultants who can participate remotely without following the posting and public access requirements.

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. (Section 54953(c)(2)).

C. Serial Meetings

In addition to regulating all gatherings of a majority of members of a legislative body, the Brown Act also addresses some contacts between individual members of legislative bodies. On the one hand, the Brown Act specifically states that nothing in the Act is intended to impose Brown Act requirements on individual contacts or conversations between a member of a legislative body and any other person (Section 54952.2(c)(1)). However, the Brown Act also prohibits a series of such individual contacts if they result in a "serial meeting" (Section 54952.2(b)).

Section 54952.2(b)(1) prohibits a majority of members of a legislative body outside of a lawful meeting from directly or indirectly using a series of meetings to discuss, deliberate or take action on any item of business within the subject matter jurisdiction of the body. Paragraph (b)(2) expressly provides that substantive briefings of members of a legislative body by staff are permissible, as long as staff does not communicate the comments or positions of members to any other members.

A serial meeting is a series of meetings or communications between individuals in which ideas are exchanged among a majority of a legislative body (i.e., three council members) through either one or more persons acting as intermediaries or through use of a technological device (such as a telephone answering machine, or e-mail or voice mail), even though a majority of members never gather in a room at the same time. Serial meetings commonly occur in one of two ways; either a staff member, a member of the body, or some other person individually contacts a majority of members of a body and shares ideas among the majority ("I've talked to Councilmembers A and B and they will vote 'yes.' Will you?") or, without the involvement of a third person, member A calls member B, who then calls member C, and so on, until a majority of the body has reached a collective concurrence on a matter.

We recommend the following guidelines be followed to avoid inadvertent violation of the serial meeting rule. These rules of conduct apply **only** when a majority of a legislative body is involved in a series of contacts or communications. The types of contacts considered include contacts with local agency staff members, constituents, developers, lobbyists and other members of the legislative body.

1. Contacts with staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. To avoid an illegal serial meeting through a staff briefing:

a. Individual briefings of a majority of members of a legislative body should be "unidirectional," in that information should flow from staff to the member and the member's participation should be limited to asking questions and acquiring information. Otherwise, multiple members could separately give staff direction thereby causing staff to shape or modify its ultimate recommendations in order to reconcile the views of the various members, resulting in an action outside a meeting.

b. Members should not ask staff to describe the views of other members of the body, and staff should not volunteer those views if known.

c. Staff may present its viewpoint to the member, but should not ask for the member's views and the member should avoid providing his or her views unless it is absolutely clear that the staff member is not discussing the matter with a quorum of the legislative body.

2. Contacts with constituents, developers and lobbyists

As with staff, a constituent or lobbyist can also inadvertently become an intermediary who causes an illegal serial meeting. Constituents' unfamiliarity with the requirements of the Act aggravate this potential problem because they may expect a member of a legislative body to be willing to commit to a position in a private conversation in advance of a meeting. To avoid serial meetings via constituent conversations:

a. First, state the ground rules "up front." Ask if the constituent has or intends to talk with other members of the body about the same subject; if so, make it clear that the constituent should not disclose the views of other members during the conversation.

b. Explain to the constituent that you will not make a final decision on a matter prior to the meeting. For example: "State law prevents me from giving you a commitment outside a meeting. I will listen to what you have to say and give it consideration as I make up my mind."

c. Do more listening and asking questions than expressing opinions.

d. If you disclose your thoughts about a matter, counsel the constituent not to share them with other members of the legislative body.

3. Contacts with fellow members of the same legislative body

Direct contacts concerning local agency business with fellow members of the same legislative body, whether through face-to-face or telephonic conversations, notes or letters, electronic mail or staff members, are the most obvious means by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of agency business with another member of the body outside of a meeting; as long as the communication does not involve a quorum of the body, no "meeting" has occurred. There is, however, always the risk that one participant in the communication will disclose the views of the other participant to a third or fourth member, creating an illegal serial meeting. Therefore, we recommend you avoid discussing local agency business with a quorum of the body or communicating the views of other members outside a meeting.

These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act's goal of achieving open government. If you have questions about compliance with the Act in any given situation, please ask for advice.

D. Notice and Agenda Requirements

Two key provisions of the Brown Act that ensure that the public's business is conducted openly are the requirements that legislative bodies post agendas prior to their meetings (Sections 54954.2, 54955 and 54956) and that no action or discussion may occur on items or subjects not listed on the posted agenda (Section 54954.2(a)(2)). Limited exceptions to the rule against discussing or taking action on an item not on a posted agenda are discussed below.

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings (Section 54954(a)). Meeting agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting (Section 54954.2(a)). The description need not exceed 20 words. Each agenda must be posted in a place that is freely accessible to the public and must be posted on the agency's website, if it has one. After January 1, 2019, additional online posting requirements apply. Agenda posting requirements differ depending on the type of meeting to be conducted.

If the meeting is a "regular meeting" of the legislative body (i.e., occurs on the body's regular meeting day, without a special meeting call), the agenda must be posted 72 hours in advance of the meeting (Section 54954.2(a)). For "special meetings," the "call" of the meeting and the agenda (which are typically one and the same) must be posted at least 24 hours prior to the meeting (Section 54956). Each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as fax, electronic mail or U.S. mail) at least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and if they have, that notice must be given at the same time notice is provided to members of the legislative body. A special meeting may not be held to discuss salaries, salary schedules or compensation paid in the form of fringe benefits of a local agency

"executive" as defined in Government Code section 3511(d). However, the budget may be discussed in a special meeting. Section 54956(b).

Both regular and special meetings may be adjourned to another time. Notices of adjourned meetings must be posted on the door of the meeting chambers where the meeting occurred within 24 hours after the meeting is adjourned (Section 54955). If the adjourned meeting occurs more than five days after the prior meeting, a new agenda for that adjourned meeting must be posted 72 hours in advance of the adjourned meeting (Section 54954.2(b)(3)).

The Brown Act requires the local agency to mail the agenda or the full agenda packet to any person making a written request no later than the time the agenda is posted or is delivered to the members of the body, whichever is earlier. The agency may charge a fee to recover its costs of copying and mailing. Any person may make a standing request to receive these materials, in which event the request must be renewed annually. Failure by any requestor to receive the agenda does not constitute grounds to invalidate any action taken at a meeting (Section 54954.1).

If materials pertaining to a meeting are distributed less than 72 hours before the meeting, they must be made available to the public as soon as they are distributed to the members of the legislative body. Further, the agenda for every meeting of a legislative body must state where a person may obtain copies of materials pertaining to an agenda item delivered to the legislative body within 72 hours of the meeting. (Section 54957.5).

A legislative body that has convened a meeting and whose membership is a quorum of another legislative body (for example, a city council that also serves as the governing board of a housing authority) may convene a meeting of that other legislative body, concurrently or in serial order, only after an oral announcement of the amount of compensation or stipend, if any, that each member will receive as a result of convening the second body. No announcement need be made if the compensation is set by statute or if no additional compensation is paid to the members. (Section 54952.3(a)).

E. Public Participation

1. Regular Meetings

The Brown Act mandates that agendas for regular meetings allow for two types of public comment periods. The first is a general audience comment period, which is the part of the meeting where the public can comment on any item of interest that is within the subject matter jurisdiction of the local agency. This general audience comment period may come at any time during a meeting (Section 54954.3).

The second type of public comment period is the specific comment period pertaining to items on the agenda. The Brown Act requires the legislative body to allow these specific comment periods on agenda items to occur prior to or during the City Council's consideration of that item (Section 54954.3).

Some public entities accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Other public entities provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda. Either method is permissible, though public comment on *public hearing* items must be taken during the hearing. Caution should also be taken with consent calendars. The body should have a public comment period for consent calendar items before the body acts on the consent calendar, unless it permits members of the audience to "pull" items from the calendar.

The Brown Act allows a body to preclude public comments on an agenda item in one situation, where the item was considered by a committee of the body which held a meeting where public comments on that item were allowed. So, if the body has standing committees (which are required to have agendized and open meetings with an opportunity for the public to comment on items on that committee's agenda) and the committee has previously considered an item, then at the time the item comes before the full body, the body may choose not to take additional public comments on that item. However, if the version presented to the body is different from the version presented to, and considered by, the committee, the public must be given another opportunity to speak on that item at the meeting of the full body (Section 54954.3).

2. Public Comments at Special Meetings

The Brown Act requires that agendas for special meetings provide an opportunity for members of the public to address the body concerning any item listed on the agenda prior to the body's consideration of that item (Section 54954.3). Unlike regular meetings, in a special meeting the body does not have to allow public comment on any non-agenda matter.

3. Limitations on the Length and Content of the Public's Comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. For example, typical time limits restrict speakers to three or five minutes. A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance (Section 54954.3(b)). However, we do not recommend setting total time limits per item for any quasi-judicial matter such as a land use application or business license or permit application hearing. Application of a total time limit to a quasi-judicial matter could result in a violation of the due process rights of those who were not able to speak to the body during the time allotted.

The Act precludes the body from prohibiting public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the city council (Section 54954.3 (c)). This does not mean that a member of the public may say anything. If the topic of the public's comments is not within the subject matter jurisdiction of the agency, the member of the public can be cut off.

The body also may adopt reasonable rules of decorum for its meetings which preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of

public meetings. Also, the right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body.

The use of profanity may be a basis for stopping a speaker. However, it will depend upon what profane words or comments are made and the context of those comments in determining whether it rises to the level of impeding the orderly conduct of a meeting. While terms such as "damn" and "hell" may have been disrupting words thirty years ago, today's standards seem to accept a stronger range of foul language. Therefore, if the chair is going to rule someone out of order for profanity, the chair should make sure the language is truly objectionable *and* that it causes a disturbance or disruption in the proceeding before the chair cuts off the speaker.

4. Discussion of Non-Agenda Items

A body may not *take action or discuss* any item that does not appear on the posted agenda (Section 54954.2).

There are two exceptions to this rule. The first is if the body determines by majority vote that an emergency situation exists. The term "emergency" is limited to work stoppages or crippling disasters (Section 54956.5). The second exception is if the body finds by a two-thirds vote of those present, or if less than two-thirds of the body is present, by unanimous vote, that there is a need to take immediate action on an item and the need for action came to the attention of the local agency subsequent to the posting of the agenda (Section 54954.2 (b)). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required.

In addition to these exceptions, there are several *limited* exceptions to the no discussion on non-agenda items rule. Those exceptions are:

- Members of the legislative body or staff may briefly respond to statements made or questions posed by persons during public comment periods;
- Members or staff may ask questions for clarification and provide a reference to staff or other resources for factual information;
- Members or staff may make a brief announcement, ask a question or make a brief report on his or her own activities;
- Members may, subject to the procedural rules of the legislative body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and

- The legislative body may itself as a body, subject to the rules of procedures of the legislative body, take action to direct staff to place a matter of business on a future agenda.

The body may not discuss non-agenda items to any significant degree under these exceptions. The comments *must* be brief. These exceptions do not allow long or wide-ranging question and answer sessions between the public and city council or between legislative body and staff.

When the body is considering whether to direct staff to add an item to a subsequent agenda, these exceptions do not allow the body to discuss the merits of the matter or to engage in a debate about the underlying issue.

To protect the body from problems in this area, legislative bodies may wish to adopt a rule that any one member may request an item to be placed on a subsequent agenda, so that discussion of the merits of the issue can be easily avoided. If the legislative body does not wish to adopt this rule, then the body's consideration and vote on the matter must take place with virtually no discussion.

It is important to follow these exceptions carefully and interpret them narrowly because the city would not want to have an important and complex action tainted by a non-agendized discussion of the item.

5. The public's right to photograph, videotape, tape-record and broadcast open meetings

The public has the right to videotape or broadcast a public meeting or to make a motion picture or still camera record of such meeting (Section 54953.5). However, a body may prohibit or limit recording of a meeting if the body finds that the recording cannot continue without noise, illumination, or obstruction of a view that constitutes, or would constitute, a disruption of the proceedings (Section 54953.5). These grounds would appear to preclude a finding based on nonphysical grounds such as breach of decorum or mental disturbance.

Any audio or video tape record of an open and public meeting that is made, for whatever purpose, by or at the direction of the city is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act. The city must not destroy the tape or film record of the open and public meeting for at least 30 days following the date of the taping or recording. Inspection of the audiotape or videotape must be made available to the public for free on equipment provided by the city (Section 54953.5).

If a member of the public requests a duplicate of the audio or videotape, the city must provide such copy. If the city has an audiotape or videotape duplication machine, the city must provide the copy on its own machine. If the city does not have such a machine, the city must send it out to a business that can make a copy. The city may charge a fee to cover the cost of duplication.

The Brown Act requires written material distributed to a majority of the body by *any person* to be provided to the public without delay. If the material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting (Section 54957.5).

One problem in applying this rule arises when written materials are distributed directly to a majority of the body without knowledge of City staff, or even without the members knowing that a majority has received it. The law still requires these materials to be treated as public records. Thus, it is a good idea for at least one member of the body to ensure that staff gets a copy of the document so that copies can be made for the city's records and for members of the public who request a copy.

F. Closed Sessions

The Brown Act allows a legislative body during a meeting to convene a closed session in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as "executive sessions," a holdover term from the Brown Act's early days. Examples of business which may be conducted in closed session include personnel evaluations or labor negotiations, pending litigation, and real estate negotiations (See Sections 54956.7 through 54957 and Sections 54957.6 and 54957.8). Political sensitivity of an item is <u>not</u> a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. And, there is a "bonus" of sorts for using prescribed language to describe litigation closed sessions in that legal challenges to the adequacy of the description are precluded (Section 54954.5). This so-called "safe harbor" encourages cities to use a very similar agenda format. The legislative body must identify the City's negotiator in open session before going into closed session to discuss either real estate negotiations or labor negotiations.

The legislative body must reconvene the public meeting after a closed session and publicly report specified closed session actions and the vote taken on those actions (Section 54957.1). There are limited exceptions for certain kinds of litigation decisions, and to protect the victims of sexual misconduct or child abuse.

Contracts, settlement agreements or other documents that are finally approved or adopted in closed session must be provided at the time the closed session ends to any person who has made a standing request for all documentation in connection with a request for notice of meetings (typically members of the media) and to any person who makes a request within 24 hours of the posting of the agenda, if the requestor is present when the closed session ends (Section 54957.1).

The Brown Act also includes detailed requirements describing when litigation is considered "pending" for the purposes of a closed session (Section 54956.9). These requirements involve detailed factual determinations that will probably be made in the first instance by the City Attorney.

Roberts v. City of Palmdale, 5 Cal.4th 363 (1993), a California Supreme case, affirms the confidentiality of attorney-client memoranda. See also Section 54956.9(b)(3)(F) with respect to privileged communications regarding pending litigation.

Closed sessions may be started in a location different from the usual meeting place as long as the location is noted on the agenda and the public can be present when the meeting first begins. Moreover, public comment on closed session items must be allowed before convening the closed session.

One perennial area of confusion is whether a body may discuss salary and benefits of an individual employee (such as a city manager) as part of an evaluation session under Section 54957. It may not. However, the body may designate a negotiator to negotiate with that employee and meet with its negotiator in closed session under Section 54957.6 to provide directions. The employee in question may not be present in such a closed session.

G. Enforcement

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, and orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body (Section 54960.1). The provision relating to efforts to penalize expression may come up in the context of measures by the legislative body to censure or penalize one of its members for breaching confidentiality or other violations. This area of law is charged with difficult free speech and attorney-client privilege issues. The tape recording of closed sessions is not required unless the court orders such taping after finding a closed session violation (Section 54960).

Prior to filing suit to invalidate an action taken in violation of the Brown Act, the complaining party must make a written demand on the legislative body to cure or correct the alleged violation. The written demand must be made within 90 days after the challenged action was taken in open session unless the violation involves the agenda requirements under Section 54954.2, in which case the written demand must be made within 30 days. The legislative body is required to cure or correct the challenged action and inform the party who filed the demand of its correcting actions, or its decision not to cure or correct, within 30 days. A suit must be filed by the complaining party within 15 days after receipt of the written notice from the legislative body, or if there is no written response, within 15 days after the 30-day cure period expires.

Any person may also seek declaratory and injunctive relief to find a past practice of a legislative body to constitute a violation of the Brown Act (Section 54960). In order to do so, the person must first send a "cease and desist" letter to the local agency, requesting that the practice cease. If the agency replies within a designated time, and disavows the practice, no lawsuit may be initiated. However, if the agency fails to reply or declares its intent to continue the practice, the lawsuit seeking to declare the practice a violation of the Brown Act may be filed, and attorney fees will be granted in the event the practice is found to violate the Act.

A member of a legislative body will not be criminally liable for a violation of the Brown Act unless the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act (Section 54959). This standard became effective in 1994 and is a different standard from most criminal standards. Until it is applied and interpreted by a court, it is not clear what type of evidence will be necessary to prosecute a Brown Act violation.

Under Section 54963, it is a violation of the Brown Act for any person to disclose confidential information acquired in a closed session. This section enumerates several nonexclusive remedies available to punish persons making such disclosures and to prevent future disclosures.

H. Conclusion

The Brown Act contains many rules and some ambiguities; it can be confusing and compliance can be difficult. In the event that you have any questions regarding any provision of the law, you should contact your City Attorney.

GUIDELINES TO PREVENT SERIAL MEETINGS

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The purpose of these guidelines is to provide members of "legislative bodies"[1] some practical suggestions to prevent serial meetings in violation of the Ralph M. Brown Act.[2]

The Brown Act is meant to promote transparency and public participation in local government: "All meetings of the legislative body of a local agency shall be open and public. . . ."[3] The Brown Act's definition of a "meeting" is broad:

> "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.[4]

To hold a meeting, the Brown Act requires public notice to be posted that includes the items of business to be discussed at the meeting.[5] Unless there is a properly noticed meeting, a majority of the Brown Act body members may not take action, deliberate, discuss—or even "hear"—items within the subject matter of their council, board, commission, committee, or standing subcommittee. It is easy to know when a majority of Brown Act body members have congregated in the same place: Just count them. And when they do so congregate (other than at a noticed public meeting), they cannot discuss their Brown Act body's business.

NO SERIAL MEETINGS

Even when they have *not* congregated in one place, the Brown Act still prohibits communications among a majority of members about their Brown Act body's business.[6] That means that, outside of a meeting, a majority of members must not communicate *indirectly* —through intermediaries or technology— about business:

> (b)(1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.[7]

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No one and nothing may be used to facilitate relevant communications among a majority of Brown Act body members outside of a meeting: not a staff person, not a member of the public, not an email forward, not a Facebook page, etc. These types of communication among a majority of Brown Act body members (made through intermediaries or technology and not while congregated in one place) are called "serial meetings."

Serial meetings pose a special danger because they can occur *unintentionally*. Avoiding illegal serial meetings requires Brown Act body members to know the dangers and take affirmative steps to avoid them. These guidelines will help.

OLD SCHOOL PROBLEMS

A. Contacts with staff

The goal of the Brown Act is to have local government bodies deliberate and make decisions in an open and public meeting. If a staff member met individually with each Brown Act body member and served as an intermediary to forge consensus among the members, the public would be deprived of the opportunity to observe and participate in the decisionmaking process. On the flip side, if Brown Act body members showed up to conduct business without the benefit of a staff report or an opportunity to have new concepts or history explained, the meeting may become inefficient and the members would be unprepared to conduct the People's business. Neither of these two scenarios serves the public well.

The Brown Act recognizes the value of staff briefings, but imposes limits to protect its goal.[8] It allows staff members to answer questions and provide information to Brown Act body members, but prohibits staff from communicating the positions of the Brown Act body members to other members of that same body:

> [The Brown Act provides that the prohibition on serial meetings] shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.[9]

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Staff can inadvertently (or intentionally) become a conduit among a majority of the Brown Act body members in the course of providing briefs on local agency business items. Multiple members of the Brown Act body could separately give staff direction thereby shaping the ultimate recommendation to the Brown Act body as staff attempts to reconcile the differing views or direction. Members of Brown Act bodies should be careful not to cross this line.

To avoid discussing, deliberating, or taking action[10] by way of staff briefing, please consider the following guidelines:

1. Limit your interactions during individual staff briefings to asking questions and acquiring information.

2. Avoid providing staff with your views and positions during individual staff briefings (unless it is absolutely clear that the staff member is not discussing the matter with other Brown Act body members).

3. Do not ask staff to describe or speculate about the views of other Brown Act body members.

B. Contacts with constituents, developers, and lobbyists

A constituent, developer, or lobbyist can also become an intermediary among a majority of a Brown Act body causing a violation of the Brown Act. Remember, this can happen even if the Brown Act body member did not intend to participate in a violation of the Brown Act. If members share their positions with third parties, they create a potential intermediary to cause a violation of the Brown Act. And also remember, only members of the body are liable for compliance with the Brown Act.

Many constituents' unfamiliarity with the requirements of the Brown Act aggravate this potential problem because they may believe that a Brown Act body member should, in the ordinary course of performing his or her public duty, commit to a position in a private conversation in advance of a meeting.

To avoid discussing, deliberating, or taking action by way of constituent conversation, please consider the following guidelines:

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1. In private meetings, state the ground rules up front. Make it clear that the constituent should not disclose the views of other members during the conversation.

2. Engage in more listening and asking questions rather than expressing views or opinions.

3. Explain to the constituent that you will not make a final decision on a matter prior to the meeting on the subject matter.

4. At the end of the conversation, if you have disclosed your thoughts about a matter, counsel the constituent not to share your thoughts with other members of the Brown Act body.

C. Contacts with fellow Brown Act body members

Direct contact concerning local agency business with fellow members of the same Brown Act body is the most obvious means by which an illegal serial meeting can occur. This contact can occur through face-to-face or telephone conversations or text or email messages.

This is not to say that a Brown Act body member is precluded from discussing items of agency business with another member of the body outside of a meeting; as long as the communication does not involve a *majority* of the body, no meeting has occurred.

But, there is always the risk that one participant in the communication will disclose the views of the other participant to another member, thereby creating a serial meeting in violation of the Brown Act.

If you are a member of a five-member Brown Act body, you could designate a "Brown Act body buddy" with whom you discuss local agency business. (If you are on a seven-member body, you can designate two Brown Act buddies.) Be explicit in the arrangement so that you can speak freely without concern that your views will be shared with other members of the body.

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#21stCenturyProblems

Technology has increased the opportunity for communication outside of a noticed meeting and consequently has also increased the potential for violating the Brown Act. Social media creates the potential for an illegal serial meeting since members of the Brown Act body can learn other members' views—outside of a meeting—from the privacy of the home, car, or office. These types of communication impede the Brown Act's goal of promoting transparency and public participation in local government. Special care is warranted.

A. Emails and text messages

To avoid discussing, deliberating, or taking action by way of emails and text messages, please consider the following guidelines:

1. Do not send emails or text messages to the whole Brown Act body.

2. Use "bcc" in email communications when sending informational items to other Brown Act body members. This will help avoid the unintentional group message in the event a member hits "reply all."

3. Remind Brown Act body members to refrain from clicking "reply all" in response to your email communication.

4. Ask the city clerk or city manager to forward the informational items to other Brown Act body members.

B. Social media

Social media platforms, such as Twitter, Facebook, Instagram, etc., allow members of Brown Act bodies to share information, which may include information relating to the Brown Act body's business. If a majority of Brown Act body members are all friends on Facebook or follow each other on Twitter, those platforms could host an illegal serial meeting if the Brown Act body's business is the topic of the social media post.

To avoid discussing, deliberating, or taking action by way of social media, please consider the following guidelines:

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1. Keep information about upcoming matters before your Brown Act body *general* on social media – encouraging participation in noticed meetings is a good use of social media, but using social media as an alternative to noticed public meetings runs afoul of the goal of the Brown Act.

2. Do not enter a group page or chat for the members of your Brown Act body.

3. Do not contribute content that expresses your position regarding upcoming Brown Act body business on the City's social media page. This is more of a concern for administrative or "quasi-judicial" actions (like planning or business license applications).

■ ■ ■

These suggested rules of conduct may seem restrictive and may make it more difficult to gather information. But following the guidelines will help assure that your conduct comports with the Brown Act's goal of achieving open government and affording the public a meaningful opportunity to participate in local government.

If you have questions about compliance with the Brown Act in any given situation, you should ask your city attorney for further guidance and advice.

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[1] Under Gov't Code § 54952, a "legislative body" includes much more than just the governing body (the city council, board of supervisors, or district board). For the purposes of the Brown Act, a legislative body includes all boards, commissions, committees, and standing subcommittees created by the governing body or by one of its subordinate bodies. This is true whether the body is advisory or decisionmaking. In this summary, we refer to "Brown Act bodies" which are the same thing as "legislative bodies" under the Brown Act.

[2] Gov't Code § 54950, et seq., which is also sometimes known as the Open Meeting Law or the Government in Sunshine Act.

[3] Gov't Code § 54953.

[4] Gov't Code § 54952.2(a).

[5] Gov't Code § 54954.2.

[6] Gov't Code § 54952.2(b)(1).

[7] Gov't Code § 54952.2(b)(1).

[8] Gov't Code § 54952.2(b)(2).

[9] Gov't Code § 54952.2(b)(2).

[10] "Action taken" means a collective decision, commitment, or promise to make a decision or an actual vote made by a majority of the members of a Brown Act body. (Gov't Code § 54952.6.)

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PRINCIPAL CONFLICT OF INTEREST LAWS IN CALIFORNIA

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SUMMARY OF THE PRINCIPAL CONFLICT OF INTEREST LAWS THAT APPLY TO THE LOCAL AGENCY DECISIONS

Set forth below is a general summary of the conflict of interest laws and regulations for typical decisions of a local agency. Also included is a summary of laws prohibiting the receipt of gifts and honoraria. These laws are complex and the consequences of a violation can be very serious. Accordingly, we strongly recommend you seek legal advice from the City Attorney whenever you have serious doubt about the requirements of these laws.

I. GENERAL CONFLICT OF INTEREST LAWS THAT ARE APPLICABLE TO DECISIONS OF AN AGENCY

There are three principal conflict of interest laws that apply to local agency decisions:

A. POLITICAL REFORM ACT OF 1974

The Political Reform Act of 1974 (Government Code Section 81000 *et seq*., "Act") is the principal law in California governing conflicts of interest for public officials. Its conflict of interest provisions are found at Government Code Section 87000 *et seq*. The Fair Political Practices Commission ("FPPC") has interpreted the Act in a series of Regulations found at 2 Cal. Code of Regulations, Section 18110 *et seq*.[1]

The Act requires public officials to disqualify themselves from making, participating in the making, or in any way attempting to use their official position to influence a decision in which they know or have reason to know they have a financial interest (Section 87100).

Section 87105 requires that an official disqualified by a financial conflict of interest, upon identifying the nature of the conflict, leave the room in which the meeting is taking place (and, likewise, not attend a closed session during which the matter is to be discussed). The official may remain on the dais only if the item creating the conflict is on the consent calendar. The section does not preclude the official from participating as a member of the audience as necessary to protect the official's property or business interests. Regulation Section 18704.4(b) elaborates on these requirements.

An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official, or on a member of his or her immediate family, or on certain listed financial interests. Those listed financial interests are:

"(a) Any business entity in which the public official has a direct or indirect investment worth Two Thousand Dollars ($2,000) or more.

[1] All statutory references are to the California Government Code unless otherwise indicated. Regulations of the FPPC are referred to as "Regulation Section."

(b) Any real property in which the public official has a direct or indirect interest worth Two Thousand Dollars ($2,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. . . ." [The dollar amount in this paragraph (e) has been increased to $500 by the FPPC pursuant to Regulation Section 18940.2] (Section 87103.)[2]

The Regulations of the FPPC provide interpretation and guidance to most of the terms used in the Act as well as standards for determining if each element of the Act's prohibitions have been satisfied. Some of the most significant regulations address standards for determining if a decision has a material financial effect on a business entity (Regulation Section 18702.1), or on various types of interests in real property (Regulation Sections 18702.2 and 18703.2). The FPPC has been engaged in a comprehensive review and revision of many of these regulations and more changes are expected. Proposed and new regulations may be reviewed on the FPPC's website.

One of the most common grounds for a conflict of interest affecting a local government official is whether a decision will have a material financial effect on an official's interest in real property. The FPPC regulations setting forth standards to make this determination (2 Cal. Code of Regulations Sections 18702.2(a)) regarding property owned by an official are as follows:

(1) Involves the adoption of or amendment to a development plan or criteria applying to the parcel;

(2) Determines the parcel's zoning or rezoning (other than a zoning decision applicable to all properties designated in that category), annexation or de-annexation, or inclusion in or exclusion from any city, county, district, or other local government subdivision, or other boundaries, other than elective district boundaries;

(3) Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel;

[2] This amount is adjusted for inflation in January of odd-numbered years. The adjusted annual gift limit amount in effect for the period from January 1, 2019 to December 31, 2020, is $500.

(4) Authorizes the sale, purchase, or lease of the parcel;

(5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on the property;

(6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services;

(7) Involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property;

(8) Involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

A. Development potential;
B. Income producing potential;
C. Highest and best use;
D. Character of the parcel of real property by substantially altering traffic levels, or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality;
E. Market value;

The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest involving property 1,000 feet or more from the property line of the official's property is presumed not to be material. This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property.

Similar standards are set forth in subparagraph (c) of Section 18702.2 for leasehold interests.

The financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is not material if:

(1) The decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(2) The decision solely concerns the adoption or amendment of a general plan and all of the following apply:

(A) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is a financial interest to the public official, or by a person representing either the public official or a financial interest to the public official.

(B) The decision requires a further decision or decisions by the public official's agency before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

(C) The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and economic interests of the official are not singled out.

(D) The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

The "Public Generally" Exception

Once it is determined that it is reasonably foreseeable that the decision will have a material financial effect on a public official's financial interest or interests, the decision must be evaluated under the "public generally" exception (Regulation Sections 18707 *et seq*.). The public generally exception provides that even if the decision will have a reasonably foreseeable material financial effect on the official's financial interest, disqualification is required only if the effect on the public official is distinguishable from the effect on the financial interests of the public generally or a significant segment of that public. The "public generally" is comprised of the entire jurisdiction of the city (In re Legan, 9 FPPC Ops.1 (1985)).

Pursuant to Regulation Section 18703, a governmental decision will affect a significant segment of the public if the decision will affect twenty-five percent or more of the city's population, of all property owners in the city or of all businesses in the city.

Campaign Contributions to Officers Sitting on Appointed Boards

Government Code Section 84308 places limits on the receipt of campaign contributions by officers sitting on appointed boards. It expressly does not apply to elected officials when functioning in their elected capacity. It does, however, apply to elected officials who are "acting as a [appointed] voting member of another agency." (Sec. 84308(a)(3)).

The basic prohibition of Section 84308 is this: An appointed official may not solicit or accept a contribution of more than $250 from any "party" or any "participant" while the proceeding involving a license, permit or other entitlement is pending and for three months following the date of a final decision. A "party" is defined to mean an applicant for a permit or license or other entitlement who comes before the board on which the official is a member. A "participant" is defined to mean any person who is not a party but who actively supports or

opposes and who the official knows has a financial interest in a particular decision involving a permit, license or other entitlement.

In addition, Section 84308 includes a disclosure and disqualification requirement: If a party or a participant has given an appointed official a campaign contribution of more than $250 within 12 months preceding the date a decision is made on a permit, license or other entitlement by the board on which the official sits as an appointed member (and, presumably, before the matter was "pending"), the official must disclose that fact on the record of the proceeding and must disqualify him or herself from participating in the matter. An exception applies if the official receives a contribution that would otherwise require disqualification; if the official returns the contribution within 30 days from the time the official knows, or should have known, about the contribution and the proceeding involving a license, permit or other entitlement for use, the official may participate in the proceeding.

B. GOVERNMENT CODE SECTION 1090

Government Section 1090 provides in relevant part:

"Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. . . ."

The prohibition contained in Section 1090 is intended to preclude a public official from using his or her official position as a government officer or employee to obtain business or financial advantage. The purpose of the prohibition is to remove the possibility of any personal influence which might bear on an official's decision-making activities with respect to contracts entered into by the governmental entity.

The prohibition contained in Section 1090 involves three principal components: (1) the person subject to the prohibition must be regarded as an officer or employee of one of the types of governmental entities listed; (2) the public officer or employee must be financially interested in the contract; and (3) the contract must be made either (i) by the public official in his or her official capacity; or (ii) by the body or board of which he or she is a member.

Section 1090 is unlike the Political Reform Act and the Common Law Doctrine Against Conflicts of Interest (discussed below), which each permit the public official with the conflict of interest to abstain from participation in the decision but otherwise allow the decision to go forward. Section 1090 prevents the City from even entering into the contract in which one of its officers or employees has a financial interest unless certain exceptions apply. Because the application of this rule can have serious consequences for the City, it is important that you consult our office about its application to any City contract in which you may have an interest.

The term "financially interested" has been interpreted to include any direct interest, such as that involved when an officer enters directly into a contract with the body of which he is a member (*Thompson v. Call*, 38 Cal.3d 633, 645 (1985)). It has also been

interpreted to include indirect financial interests in a contract, where for example, a public official would gain something financially by the making of the contract (*Fraser-Yamor Agency, Inc. v. County of Del Norte*, 68 Cal.App.3d 201 (1977)).

The third element is that the contract has to be "made" either by the official or employee acting in his or her official capacity, or by any body or board of which the official is a member. The term "made," as used in the statute has been interpreted broadly by the courts to encompass such elements in the making of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans or specifications and solicitation for bids (*Milbrae Association for Residential Survival v. City of Milbrae*, 262 Cal.App.2d 222, 237 (1968), *City Council v. McKinley*, 80 Cal.App.3d 204, (1978)).

There are two sets of exceptions to Section 1090. The first is set forth in Section 1091 which specifies certain "remote interests." If an official has only a remote interest in a contract, then the Agency may enter into the contract as long as the official abstains from the participating in any way in the decision. The second set of exceptions is found in Section 1091.5. These exceptions are called the "non-interests" and are excluded from the scope of Section 1090 altogether.

If a violation of Section 1090 is proved, the contract is deemed void (Section 1092). In addition, civil and criminal penalties could apply, and the public official with the financial interest in the contract could be forever barred from holding public office (Section 1097). Obviously, these penalties are very severe. We would be happy to provide whatever advice you need to avoid problems in this area.

C. COMMON LAW DOCTRINE AGAINST CONFLICTS OF INTEREST

The common law doctrine against conflicts of interest is the courts' expression of the public policy against public officials using their official positions for their private benefit (see, *Terry v. Bender*, 143 Cal.App.2d 198, 206 (1956)). This doctrine has been primarily applied to require a public official to abstain from participation in cases where the public official's private financial interest may conflict with his or her official duties (*Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152; 64 Ops.Cal.Atty.Gen. 795, 797 (1981)).

By virtue of holding public office, an elected official "is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." (*Noble v. City of Palo Alto*, 89 Cal.App. 47, 51 (1928)). An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of a private interest. (*Id*; see also *Nussbaum v. Weeks*, 214 Cal.App.3d 1589, 1597-98 (1989)).

This doctrine is an independent basis from the Political Reform Act for requiring Agency officials and employees to abstain from participating in Agency discussions or decisions involving matters in which they have a financial interest. Violation of the common law duty to

avoid conflicts of interest can constitute official misconduct and result in a loss of office. (See *Nussbaum*, 214 Cal.App.3d at 1597-98.)

Public officials may not participate in quasi-judicial decisions as to which they are biased – decision makers engaged in adjudicative proceedings must be fair and impartial. *Nasha v. City of Los Angeles* (2004) 125 Cal. App. 4th 470; *Mennig v. City Council* (1978) 86 Cal. App. 3rd 341. A proceeding tainted by an "unacceptable probability of actual bias" will be invalid for violating fair process. *Nasha, supra*, at 483. The issue of bias has arisen in three separate cases involving city councils exercising their appellate jurisdiction to take up decisions made by their planning commissions: *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547 (city council's assertion of jurisdiction invalidated because not authorized by city rules); *BreakZone Billiards v. City of Torrance* (2000) 81 Cal. App. 4th 1205 (city councilmember did not exhibit bias by asking for appeal of planning commission decision where municipal code expressly provides for it and member did not express strong views); and *Woody's Group, Inc. v. City of Newport Beach* (2105) 233 Cal. App. 4th 1012 (city councilmember who appealed planning commission decision was biased and council action on appeal was invalidated).

II. LAWS THAT PROHIBIT CERTAIN GIFTS, HONORARIA AND LOANS

The conflict of interest laws set forth above do not prohibit an official from having an interest in a business or real property, they merely prevent the official from participating in a decision that would materially affect those interests.

However, the State Legislature has taken a different approach with regard to certain gifts, honoraria and loans. State law has been amended to preclude elected local officials from receiving certain gifts, honoraria and loans. These prohibitions apply whether or not the source of the gift, honorarium or loan is, or will ever be, affected by a decision of the official's agency. Additionally, these limitations apply to certain other designated local officials, including planning commissioners.

A. Limitations on the Receipt of Gifts

1. ***General Gift Limitation*** - Government Code Section 89503 (a) provides:

"No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250)."

A similar limitation prohibits a city employee designated in a conflict of interest code from accepting gifts from a single source totaling more than $250 in value in any calendar year, if the gifts would be required to be reported on his or her statement of economic interests. [Section 89503(c)] Gifts received from an individual and an entity (such as a business) to which the individual is associated will be aggregated if the individual has more than a fifty percent ownership interest in the entity, unless it is demonstrated that someone else controlled the payment of the gift [Regulation Section 18945.1].

2. ***Biennial Gift Limit Adjustment*** - The Political Reform Act authorizes the FPPC to make an inflationary adjustment of the limitations set forth in Section 89503 every two years. [§ 89503(f).] By way of Regulation Section 18940.2, the adjusted annual gift limitation in effect for the period January 1, 2019 to December 31, 2020 for both elected officials and employees is $500. These figures will next be further adjusted effective January 1, 2021 and in future odd-numbered years.

3. ***Exceptions to Gifts and Gift Limitations***

a. ***Basic Exceptions*** - FPPC Regulation Section 18942 is summarized below: None of the following payments is a gift:

(1) ***Informational Materials*** - such as books, reports, pamphlets, calendars, periodicals, or videotapes, and free or discounted admission to educational conferences that are provided to assist the official in the performance of official duties. While transportation is generally not included, certain "transportation" is allowable if it serves as the means through which the information is conveyed and is essential to the conveyance of the information. The definition of informational material includes certain narrow categories of transportation. Examples of such "transportation" include aerial tours that serve as the best means to inform officials of certain relevant conditions, and rides to remote, limited public access facilities, or rides within a restricted inspection site.

(2) ***Returned or Donated Gifts*** - Unused gifts that are returned to the donor or reimbursed within 30 days of receipt are not reportable. The recipient may also donate the unused item to a charity or governmental agency within 30 days of receipt or acceptance as long as the donation is not claimed as a tax deduction (Regulation Section 18941).

As of 2012, officials who make a charitable donation of a gift provided to them so that they may legally avoid receipt may no longer donate that gift to any charity in which the official, or the official's immediate family, holds a position. Only charitable donations of gifts made to 501(c)(3) organizations that are unconnected to the official or the official's immediate family will qualify for this exception. Gifts donated to organizations in which the official or an immediate family member holds a position will be treated as a gift to the official despite the donation.

(3) ***Family Gifts*** - : Gifts from family members (as defined in the FPPC Regulations) are generally not subject to gift limit and reporting requirements unless the donor is acting as an agent or intermediary for any other person. Therefore, gifts from your spouse (or former spouse), child, parent, grandparent, grandchild, brother, sister, current parent-in-law, brother-in-law, sister-in-law, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. Family members now also include great-grandparents, aunts, uncles, nieces, great/grand aunts, uncles and nieces and nephews. Additionally, former in-laws are generally included in the exception.

(4) ***Campaign Contributions*** – Campaign contributions are not reportable as gifts, but are required to be reported.

(5) ***Inherited Money or Property*** - Any devise or inheritance.

(6) ***Awards*** - A personalized plaque or trophy with an individual value of less than two hundred fifty dollars ($250).

(7) ***Home Hospitality*** - Hospitality (including food, beverages, or occasional lodging) provided to an official by an individual in his or her home when the individual is present, unless (i) any part of the hospitality is paid directly or reimbursed by another person; (ii) any person deducts any part of the cost of such hospitality as a business expense on any government tax return; or (iii) there is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person includes a portion to be utilized to provide gifts of hospitality in the individual's home. The exception is not applicable unless the individual who provides the hospitality is someone "with whom the official has a relationship, connection, or association unrelated to the official's position." Lobbyists (who are otherwise subject to a ten dollar per month gift limit) and other individuals who do business or are regulated by an agency can no longer get around the gift restrictions by using the home hospitality exception, unless the host has an independent relationship with the official and the hospitality is in connection with that relationship (e.g. a block party at your neighbor's house, a birthday party that your daughter is invited to attend at her classmate's home, a Passover meal at a long time associate's home). With these restrictions now in place, the home hospitality exception covers more than just the host's primary home; home hospitality can be extended at a vacation home or even a motor home or boat.

(8) ***Presents on Personal or Family Occasions*** - Presents exchanged between an official and an individual, other than a lobbyist, on holidays, birthdays, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.

(9) ***Leave Credits*** - Leave credits, including vacation, sick, leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position.

(10) ***Payments for Assistance from Government or Charitable Organizations*** - Payments received under a government program or a program established by a bona fide 501(c)(3) charitable organization designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if such payments are available to members of the public without regard to official status.

(11) ***Admission and Incidentals at Speaking Events*** - Free admission, and refreshments and similar non-cash nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. These items are not gifts and need not be reported by any official.

(12) ***Travel*** **-** The transportation, lodging, and subsistence reasonably related to a legislative or governmental purpose, or an issue of state, national, or international public policy such as speeches, panels, seminars and campaign activities, including attendance at political fundraisers. Travel arrangements provided for by campaign funds, by an official's agency, and in connection with a bone fide business are also exempt.

(13) ***Tickets or passes for Ceremonial Role*** – A ticket or pass provided to an official to an event at which the official performs a ceremonial role or function on behalf of the agency. The ceremonial role must be conducted at the request of the holder of the event, and the ceremony must be part of the event itself so that the focus of the event is, for a period of time, on the ceremony being performed. Local jurisdictions are allowed a certain amount of discretion to determine what types of actions are allowable under the ceremonial role exception.

(14) ***Wedding Gifts*** - A gift given to an official in celebration of the official's wedding. The value of a wedding gift given to an official and his or her spouse or spouse-to-be is one-half of the gift's total value unless the gift is singularly appropriate for the personal use and enjoyment of the official or specifically intended exclusively for the personal use and enjoyment of the official, in which event the full value of the gift is attributable to the official. [FPPC Regulation Section 18946.3]

(15) ***Reciprocal Exchanges:*** Gifts of approximately equal value that you exchange with friends for birthdays, holidays and similar occasions are not subject to gift limit and reporting requirements. The exception recognizes the reality that people get together with certain friends on an ongoing basis for meals, rounds of golf, movies, shows, sporting events etc., where they typically take turns paying for the benefit, so that over time the payments equal out. The rule requires reporting of the amount received in excess of the amount provided. The rule does not apply to any single payment over the gift limit and does not apply to benefits provided by lobbyists.

(16) ***Wedding Attendance:*** This exception recognizes that normal benefits received while attending a wedding are not the sorts of gifts that are intended to influence an official. People do not generally get married and have a wedding reception as a reason to get around the gift restrictions. Meals and entertainment received at a wedding are only potentially reportable to the extent that they exceed the benefits extended to the other guests attending the wedding.

(17) ***Bereavement Offerings*****:** This exception allows the receipt of items, such as flowers at a funeral, without gift reporting consequences. Again, this exception recognizes that there are some areas of common personal behavior that have no correlation with attempts to influence public officials in the performance of their duties and do not relate to the concerns addressed by the Act. Typical bereavement offerings are not reportable as gifts.

(18) ***Acts of Neighborliness***: This exception is a codification of long established FPPC opinions allowing the exception. The FPPC has limited this exception to the normal types of acts that would be performed by a kindly neighbor or a Good Samaritan assisting someone in need. It no longer may be applied to air transportation as suggested by a previous FPPC opinion.

(19) ***Bona Fide Dating Relationship:*** This exception provides that benefits received within the context of a bona fide dating relationship are not subject to the Act's reporting requirements. In establishing the bona fide dating relationship exception, the rule treats these relationships as similar to family or spousal relationships in which personal gifts are frequently exchanged and disclosure of such gifts would not further the purposes of the Act. However, public officials have an economic interest in their dating partner and may not participate in decision affecting the financial interests of that partner.

(20) ***Acts of Human Compassion:*** This exception addresses compassionate offerings of private assistance to individuals who, through unexpected circumstances, find themselves in need of such contributions in order to manage or cope with their misfortune. Examples of such situations included family medical expenses due to an illness or injury, long-time loss of employment, or loss of housing. Assistance from private individuals to meet such needs are not subject to the Act's requirements so long as such assistance is not provided by someone who lobbies the official's agency or who does business with or is regulated by the official's agency if the official is involved.

(21) ***Best Friends Forever***: Gifts from long term personal friends where the friendship is not related to the official's position are also not subject to the Act's provisions, so long as the friend is not someone who lobbies the official's agency or who does business with or is regulated by the official's agency if the official is involved.

(22) ***Unrelated Gifts:*** This exception apples to gifts based on some other personal or business relationships unrelated to the official's position where the gift is not made by a lobbyist and the official's duties are limited in respect to the actions he or she may take such that there is no evidence whatsoever that the official may engage in any type of official activity that may provide a financial benefit to the donor. This language simply mirrors the reporting requirement established under the Act's conflict of interest reporting requirements.

4. ***Gifts to Official's or Candidate's Family Members*** - FPPC Regulation Section 18943 provides (in summary):

a. The rule restricting gifts to family members includes a rebuttable presumption that a gift made to a family member of an official is a gift to the official if there is no established relationship between the donor and the family member that would suggest a reason for the gift, or if the gift is made by a lobbyist of the official's agency, or by someone who is, or has been within the previous 12 months, involved in an action in which the official will foreseeably participate, or a person who contracts with or engages in a business that regularly seeks contracts with or comes before the agency and the official could foreseeably participate in that decision.

b. A gift to an official's family member confers a presumed personal benefit on the official in any of the following circumstances:

(1) The gift is made to a family member of a state agency official who is subject to Section 87200 by a donor who is a lobbyist, lobbying firm, lobbyist employer, or other person required to file reports.

(2) The gift is made to a family member of a local government agency official who is subject to Section 87200 by a donor who is or has been directly involved in a governmental decision in which the official will foreseeably participate or has participated in the prior 12-month period.

c. ***Exception.*** There is no gift to an official if both of the following circumstances apply:

(1) The official can show there is an established working, social, or similar relationship between the donor and the official's family member independent of the relationship between the donor and the official.

(2) The person who made the gift is not a donor identified in paragraphs (c)(1) or (c)(2).

5. ***Tickets to Political and Charitable Fundraisers*** - Regulation Section 18946.4 provides (in summary):

a. ***Nonprofit Fundraiser*** - Except as provided in subdivision (b), a ticket to a fundraising event for a nonprofit, tax-exempt organization (that is not a political campaign committee) shall be valued as follows:

(1) Where the event is a fundraising event for a nonprofit organization, and the ticket clearly states that a portion of the ticket price is a donation to the organization, then the value of the gift is the face value of the ticket or admission reduced by the amount of the donation.

(2) If the ticket has no stated price or no stated donation portion, the value of the ticket is the official's pro rata share of the cost of the event.

b. ***Fundraiser for a religious, charitable, scientific, literary or educational organization*** - When the event is a fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the organization may provide two tickets per event to an official and those tickets shall be deemed to have no value so long as the cumulative value of the nondeductible portion of the ticket(s), as provided in subdivision (a), received from

the same organization during a calendar year does not exceed $460. Additional tickets are valued under subdivision (a) above.

c. ***Political Fundraiser*** - Where the event is a fundraising event for a campaign committee or candidate, the committee or candidate may provide two tickets per event to an official and those tickets shall be deemed to have no value. The face value any additional tickets must be reported.

6. ***Prizes and Awards from Competitions*** – Regulation Section 18942 (13) provides (in summary):

A prize or an award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as an official or candidate. A prize or award which is not reported as a gift shall be reported as income.

7. ***Passes and Tickets*** – Regulation Section 18946.1 provides (in summary):

(a) The value of a ticket used to attend a future event is the face value of the ticket. This value includes any item that is provided as a giveaway as part of the attendance at the event. If the ticket is not used, the value is the fair market value of the unused ticket.

(b) For the purposes of disclosure and gift limits, the value of a pass is the fair market value of the actual use of the pass by the official and any other individuals who are admitted with the pass up to the price at which the pass was offered for sale to the general public. This value is equal to the price of a one-time admission multiplied by the number of uses of the pass up to the price at which the pass was offered for sale to the general public.

(c) For purposes of disqualification, the value is the price at which the pass was offered for sale to the general public. If the official returns the pass before the decision, the value is the actual use of the pass or ticket by the official and any persons who are admitted with the pass or ticket.

8. ***Attendance at Invitation-Only Events*** - Regulation Section 18946.2 provides (in summary):

(d) When an official attends an invitation-only event, the value of the benefit received by the official in attending the event is the officials' pro rata share of the cost of the event (*e.g.*, the cost of all food and beverages, rent of the facilities, decorations, entertainment, any specific item presented to all attendees at the event, and all other costs associated with the event, divided by the number of acceptances or the number of attendees).

(e) When an official performs an official or ceremonial function at an invitation-only event, in which the official is invited to perform the function by the event's sponsor or organizer, the value of the benefit received by the official in attending the event is the cost of any food provided to the official plus the value of any specific item that is presented to the official at the event.

(f) Except as provided in (g) below regarding lobbyist sponsored events, if an official attends an invitation-only event and leaves before receiving any meal or entertainment (excluding music provided for background ambiance) and receives only minimal appetizers and drinks, the value of the gift received is the value of any specific item received by the official at the event; the nominal value of the food is not reportable.

(g) When an official attends an invitation-only event sponsored by a lobbyist, lobbying firm, or lobbyist employer, the value of the gift is determined pursuant to the provisions of Regulation 18640.

9. ***Certain Gifts of Travel Exempt from Gift Limitations (Gov't Code Section 89506 and Regulation Section 18950.1).***

a. ***Travel In Connection With Speeches, Panels, and Seminars***.

(1) A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts if:

(A) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, and

(B) The travel, including actual transportation and related lodging and subsistence, is in connection with a speech given by the official or candidate; the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech; and the travel is within the United States.

b. ***Travel Provided by Governmental Entity or Charity*** A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts if:

(1) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and

(2) The payment is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, defined in Section 203 of the Revenue and Taxation Code, or by a nonprofit charitable or religious organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person that is domiciled outside the United States and that substantially

satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code. (Government Code Section 89506).

c. ***Travel Paid From Campaign Funds*** - A payment made for transportation and necessary lodging and subsistence, which payment is made from campaign funds as permitted by Government Code Section 89513, or which is a contribution, is not an honorarium or a gift.

d. ***Travel Provided By Official's Agency*** - A payment made for transportation and necessary lodging and subsistence, which payment is made by the agency of an official, is not an honorarium or a gift.

e. ***Travel In Connection With Bona Fide Business*** - A payment made for transportation, lodging, and subsistence, which payment is reasonably necessary in connection with a bona fide business trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code, is not an honorarium or gift unless the sole or predominant activity of the business, trade or profession is making speeches.

10. ***Tickets or passes provided to official's agency.*** Regulation Section 18944.1 governs complimentary tickets or passes to events that are given to a government agency and distributed to public officials and employees at no charge. The Regulation requires the agency receiving the tickets or passes to adopt a written policy governing their distribution and requires disclosure of the officials and employees to whom they are distributed. The Regulation limits the use of the tickets or passes to the agency official or employee or members of their family and one guest. The distribution of a ticket or pass pursuant to this Regulation shall be posted on Form 802 in a prominent fashion on the agency's website within 30 days of the distribution. If the agency does not maintain a website, the form shall be maintained as a public record, be subject to inspection and copying, and be forwarded to the FPPC for posting on its website.

11. ***Gifts from an Agency to Officials in that Agency.*** Regulation Section 18944.3 governs payments by a government agency from that agency's assets that provides food, beverage, entertainment, goods, or services of more than a nominal value to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys.

12. ***Raffles and Gift Exchanges.*** Regulation Section 18944.2 provides that a payment made by a government agency to an agency employee in a raffle open to all employees of the agency holding the raffle, or received in an agency gift exchange, will be treated as a gift to the employee.

13. ***Behested Contributions.*** Government Code Section 82015(b)(2)(B)(iii) provides that charitable contributions made at the behest of a candidate who is an elected officer principally for legislative, governmental or charitable purposes are not campaign contributions, but such contributions (if they exceed $5,000) must, nonetheless, be disclosed within 30 days following the date on which the contribution is made. Information about the donation (name of donor,

address of donor, amount of donation, date of donation, name and address of recipient, purpose of the donation) must be provided to the city clerk.

B. Prohibitions on Receipt of Honoraria

1. ***Basic Prohibition*** - Government Code Section 89501 provides that no elected officer of a local government agency nor any official listed in Government Code Section 87200 shall accept an honorarium.

2. An "honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

3. ***Summary of Exceptions to Prohibition on Honoraria (Regulation Section 18930 et seq.)***

a. ***Earned Income Exception (Regulation Sections 18932 and 18932.1)*** - "Honorarium" does not include income earned for personal services if:

(1) The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting; and

(2) The services are customarily provided in connection with the business, trade, or profession.

b. ***Information Materials (Regulation Section 18932.4)*** - "Honorarium" does not include information materials such as books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to educational conferences that are provided to assist the official in the performance of official duties.

c. ***Family Payments (Regulation Section 18932.4)*** - "Honorarium" does not include a payment received from one's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such person. However, a payment from any such person is an honorarium if the donor is acting as an agent or intermediary for any person not listed in this paragraph.

d. ***Campaign contributions (Regulation Section 18932.4)*** - However, campaign contributions are required to be reported.

e. ***Personalized Plaque or Trophy (Regulation Section 18932.4)*** - Honorarium does not include a personalized plaque or trophy with an individual value of less than two hundred and fifty dollars ($250).

f. ***Admission and Incidentals at Place of Speech (Regulation Section 18932.4)*** - "Honorarium" does not include free admission, refreshments and similar non-cash

nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity.

g. ***Incidentals at Private Conference (Regulation Section 18932.4)*** - "Honorarium" does not include any of the following items, when provided to an individual who attends any public or private conference, convention, meeting, social event, meal, or like gathering without providing any substantive service:

(1) Benefits, other than cash, provided at the conference, convention, meeting, social event, meal, or gathering.

(2) Free admission and food or beverages provided at the conference, convention, meeting, social event, meal, or gathering.

h. ***Travel That Is Exempt From Gifts*** - Any payment made for transportation, lodging and subsistence that is exempted by the gift exceptions.

C. Prohibitions on Receipt of Certain Types of Loans

1. ***Prohibition on Loans Exceeding $250 from Other City Officials, Employees, Consultants and Contractors*** - Elected officials and other city officials specified in Section 87200 (Commissioners, City Managers, City Treasurers, City Attorneys, etc.,) may not receive a personal loan that exceeds $250 at any given time from an officer, employee, member or consultant of your city or any local government agency over which your city exercises direction and control (Section 87460 (a) and (b)). In addition, elected officials and other city officials specified in Section 87200 may not receive a personal loan that exceeds $250 at any given time from any individual or entity that has a contract with your city or any agency over which your city exercises direction and control (Section 87460 (c) and (d)).

2. ***Requirement for Loans of $500 or More from Other Persons and Entities to be in Writing*** - Elected local officials may not receive a personal loan of $500 or more unless the loan is made in writing and clearly states that terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan document must also include the date or dates when payments are due and the amount of the payments (Section 87461).

3. ***Exceptions to Loan Limits and Documentation Requirements*** - The following loans are not subject to the limits and documentation requirements specified in subparts 1 and 2 above:

a. Loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to official status.

b. Loans received by an elected officer's or candidate's campaign committee.

c. Loans received from the elected or appointed official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption.

d. Loans made, or offered in writing, prior to January 1, 1998.

4. ***Loans that Become Gifts Subject to the Gift Prohibition (Section 87462)*** - Under the following circumstances, a personal loan received by any public official (elected and other officials specified in Section 87200, as well as any other local government official or employee required to file a Statement of Economic Interest) may become a gift and subject to gift and reporting limitations:

a. If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.

b. If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of:

(1) the date the loan was made;

(2) the date the last payment of $100 or more was made on the loan; or

(3) the date upon which the official has made payments aggregating to less than $250 during the previous 12-month period.

5. ***Exceptions -- Loans that Do Not Become Gifts*** - The following loans will not become gifts to an official:

a. A loan made to an elected officer's or candidate's campaign committee.

b. A loan on which the creditor has taken reasonable action to collect the balance due.

c. A loan described above on which the creditor, based on reasonable business considerations, has not undertaken collection action. (However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)

d. A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

e. A loan that would not be considered a gift as outlined in paragraph 3 above (e.g. loans from family members) (Section 87462).

III. MASS MAILING RULES

California law limits the use of public resources for mass mailings that feature elected officials and would have the effect of giving them an undue advantage in elections. California Government Code Section 89001 (Newsletter or mass mailing) states as follows: "No newsletter or mass mailing shall be sent at public expense." Previously found in the FPPC regulations, these rules are codified at Government Code Sections 89002 (Mass mailing prohibition; exception; definitions) and 89003 (Mass mailing preceding elections). These statutes are discussed below.

Government Code Section 89003 (Mass Mailings Preceding Elections) states as follows: "Notwithstanding subdivision (b) of Section 89002, a mass mailing, as defined in Section 82041.5, that meets the criteria of subdivision (a) of Section 89002 shall not be sent within the 60 days preceding an election by or on behalf of a candidate whose name will appear on the ballot at that election, except as provided in paragraphs (2) to (8), inclusive, and paragraph (10) of subdivision (b) of Section 89002." "Mass mailing" means over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. (Cal. Gov't Code § 82041.5.) Materials sent electronically (i.e. by email) are not defined as mass mailings and do not come within these rules.

A mass mailing is <u>prohibited at any time</u> if it satisfies all of the following:

(1) An item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. The item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

(2) The item sent either:

(A) Features an elected officer affiliated with the agency that produces or sends the mailing; or
(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency that produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

(3) Any of the costs of distribution are paid for with public money or the costs of design, production, and printing exceeding fifty dollars ($50) are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this section.

(4) More than 200 substantially similar items are sent in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).

(Government Code Section 89002(a).). To be clear, no mailing that fits the above criteria can be sent to more than 200 addresses in a calendar month. And, no mailing that fits the above criteria may be mailed at all within the 60 days preceding a municipal election.

The following types of mass mailings are allowed at any time (Government Code Section 89002(b)(2) – (8) and (b)(10)):

(2) A press release sent to members of the media.

(3) An item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer, including all local, state, and federal officers or entities.

(4) An intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.

(5) An item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks, and similar documents, in any instance in which use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds. The item shall not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted by this section.

(6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance in which the mailing of the item is essential to the functioning of the program, the item does not include the elected officer's photograph, and use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.

(7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2), and in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. For purposes of this paragraph, inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to that notice or other item.

(8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, in which the name of each elected officer and individual listed appears in the same type size, typeface, and type color. The item shall not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted by this section.
. . .

(10) An agenda or other writing that is required to be made available pursuant to Sections 11125.1 and 54957.5, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.

* * * * *

Please remember that this general introduction to conflict of interest laws and regulations does not cover every potential decision of the City in which conflict of interest laws are implicated. The application of these laws must be analyzed on a case by case basis in light of each Council member's individual circumstances. Thus, while certain generalizations can be drawn, this is a very complicated area of law and the penalties for making a mistake can be serious; hence, it is important to seek conflict of interest advice from your City Attorney whenever questions arise.

It is also important that you evaluate each agenda with an eye towards whether any item of business is likely to have a financial impact on one of your financial interests. The City Attorney is not in a position to be familiar with your financial interests, and cannot be expected necessarily to anticipate the potential for a conflict. If you believe that a conflict is even a possibility, ask for advice, and preferably do so before the meeting, so that the City Attorney can have an opportunity to review the matter thoroughly.

INSTITUTE FOR LOCAL GOVERNMENT

Doing the Right Thing:

PUTTING ETHICS PRINCIPLES INTO PRACTICE IN PUBLIC SERVICE

Universal Ethical Values

Research by the Institute for Global Ethics identifies ethical values that transcend virtually all cultures and religions.[3] Among them are:

- Trustworthiness
- Responsibility
- Respect
- Loyalty
- Compassion
- Fairness

In the hurly-burly, competitive world of politics, it can be easy to overlook a fundamental fact: the public expects and deserves its public servants to serve the public's interest—not private or political interests.

Values are very important to the public. The public is strongly supportive of public officials' following their sense of "what is the right thing to do" in making government decisions.[1]

> "…how does the conscientious public official sort through competing considerations and determine "the right thing to do?"

The key question is: how does the conscientious public official sort through competing considerations and determine "the right thing to do?" When it comes to being a public servant, how does one put one's values into practice?

"The Right Thing to Do"

There are a number of sources of guidance. One, of course, is the law. For example, California has a complex array of laws relating to ethics in public service.

The law, however, only sets a minimum standard for ethical conduct. Just because an action is legal doesn't mean that it is ethical. Or that it reflects your or the public's values.

The key is to go to the source and think in terms of values. The chart on the next page identifies key ethical values that tend to resonate with nearly everyone--irrespective of culture, religion or national origin.[2]

Of course, the next question is: What do these values mean in the context of being a public servant? The chart below provides some food for thought.

About the Institute for Local Government

The Institute's mission is to develop forward-thinking resources to help local officials serve their communities.

Institute for Local Government
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PUBLIC SERVICE VALUES

When we talk about the values that ought to guide one's public service, what kinds of values do we mean? The following provides some ideas on values that can inform one's public service and suggests examples of what those values mean in practice.

Trustworthiness

- I remember that my role is first and foremost to serve the community.
- I am truthful with my fellow elected officials, the public and others.
- I avoid any actions that would cause the public to question whether my decisions are based on personal interests instead of the public's interests.
- I do not accept gifts or other special considerations because of my public position.
- I do not knowingly use false or inaccurate information to support my position.
- I do not use my public position for personal gain.
- I carefully consider any promises I make (including campaign promises), and then keep them.

Fairness

- I make decisions based on the merits of the issues.
- I honor the law's and the public's expectation that agency policies will be applied consistently.
- I support the public's right to know and promote meaningful public involvement.
- I support merit-based processes for the award of public employment and public contracts.
- I am impartial and do not favor those who either have helped me or are in a position to do so.
- I promote equality and treat all people equitably.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I credit others' contributions in moving our community's interests forward.
- I maintain consistent standards, but am sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms.

Responsibility

- I work to improve the quality of life in the community and promote the best interests of the public.
- I promote the efficient use of agency resources.
- I do not use agency resources for personal or political benefit.
- I represent the official positions of the agency to the best of my ability when authorized to do so.
- I explicitly state that my personal opinions do not represent the agency's position and do not allow the inference that they do.
- I take responsibility for my own actions, even when it is uncomfortable to do so.
- I do not use information that I acquire in my public capacity for personal advantage.
- I do not promise that which I have reason to believe is unrealistic.
- I disclose suspected instances of impropriety to the appropriate authorities, but I never make false charges or charges for political advantage.
- I do not disclose confidential information without proper legal authorization.
- I am proactive and innovative when setting goals and considering policies.
- I consider the broader regional and statewide implications of the agency's decisions and issues.
- I promote intelligent innovation to move forward the agency's policies and services.

Respect

- I treat fellow officials, staff and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personality traits or other issues that might distract me from focusing on what is best for the community.
- I gain value from diverse opinions and build consensus.
- I follow through on commitments, keep others informed, and make timely responses.
- I am approachable and open-minded, and I convey this to others.
- I listen carefully and ask questions that add value to discussions.
- I involve all appropriate stakeholders in meetings affecting agency decisions.
- I come to meetings and I come to them prepared.
- I work to improve the quality of life in my community.

Compassion

- I realize that some people are intimidated by the public process and try to make their interactions as stress-free as possible.
- I convey the agency's care for and commitment to its community members.
- I am attuned to, and care about, the needs and concerns of the public, officials, and staff.
- I recognize my responsibility to society's less fortunate.
- I consider appropriate exceptions to policies when there are unintended consequences or undue burdens.

Loyalty

- I safeguard confidential information.
- I avoid employment, contracts and other financial, political and personal interests that can conflict with my public duties.
- I prioritize competing issues based on objective benefits and burdens to the public interest, not to myself, my family, friends or business associates.
- I don't oppose final decisions once they have been made by the decision makers, except through internal lines of communication.
- I put loyalty to the public's interests above personal and political loyalties.

The Importance of Public Perception

The interesting – and somewhat unique – aspect of public service ethics is that it is not exclusively an introspective process. A public official can be absolutely confident that he or she is able to put personal interests or relationships aside, but the public may still question whether indeed that is so.

Public perception, therefore, matters a great deal in one's analysis of what the "right thing to do" is in public service. This is because, as public servants, public officials are stewards of the public's trust in the public's governing institutions.

In short, public service ethics is not only about doing the right thing, but also about the public's confidence that indeed the right thing has been done. But not doing the right thing just because the public's perception may be negative can have its own pitfalls. To step, or at times tiptoe, along the trail toward good government, here is a simple (but not necessarily easy) process:

- **First Step:** Figure out what "the right thing" to do is.
- **Second Step:** Figure out what the public's perception of "the right thing to do" would be.
- **Third Step:** When needed, balance the first two steps and follow the path which best supports public service values.

Types of Ethical Dilemmas

At some point in your service as an elected official, you will likely face two common types of ethical dilemmas:

- **Personal Cost Ethical Dilemmas.** This involves situations in which doing the right thing may or will come at a significant personal cost to you or your public agency. These also can be known as "moral courage" ethical dilemmas.
- **Right-versus-Right Ethical Dilemmas.** This type of ethical dilemma involves those situations in which there are two conflicting sets of "right" values.[3]

Of course, some dilemmas are a combination of both: a conflict between competing sets of "right" values (right-versus-right) and a situation in which doing the right thing involves personal or political costs.

Personal Cost Ethical Dilemmas

With these kinds of dilemmas, the costs can be political – such as the loss of a political support or perhaps even one's prospects for reelection.

Or, the cost can be financial, for example a missed opportunity for financial gain or material benefits. Issues relating to the proper use of public resources fall into the "personal cost" type of ethical dilemma, inasmuch as these dilemmas typically involve whether one is going to forgo a tempting political or personal benefit.

Finally, the cost can be more directly personal, as when a particular course of action may jeopardize a friendship.

- In these situations, the answer is relatively simple, but certainly not easy. The bottom line is that being ethical means doing the right thing regardless of personal costs.

Right-versus-Right Ethical Dilemmas

Right-versus-right ethical dilemmas can be more difficult to resolve. One example is when a lifetime, best friend urges you to do something that conflicts with your own best sense of what will serve your community's interests. In this dilemma, there is a conflict between your responsibility to do what is in the public's best interest and your loyalty to your friend. Responsibility and loyalty are both bona fide ethical values.

- The key is, as a public servant, the ethical value of responsibility (and the responsibility to do what is in the public's best interest) trumps the ethical value of loyalty. This is when thinking about the public's perception of the right thing to do can be a useful dilemma-resolution strategy (see box at left).

Endnotes

[1] Meg Bostrom, *By or For the People? A Meta-Analysis of Public Opinion of Government* (January 2005) at 31.

[2] See Rushworth M. Kidder, *How Good People Make Tough Choices* (Simon and Schuster, 1995) at 77-92.

[3] *Id.* at 13-49.

Avoid the Rationalization Trap

One way public officials can get themselves sideways with both the public's expectations and the law is when they start rationalizing or relying on situational ethics, i.e., those ethics that are sculpted to fit the facts. Many of these rationalizations can start with the fact that, as a public servant, one gives a great deal of time and energy to one's community.

As worthy as it is, this commitment does not entitle you to:

- Benefits to your business or personal finances as a result of your public service.
- Special benefits or "perks" associated with your public office from businesses or others.
- Use public resources for personal or political purposes.
- Secure special treatment from your agency or others in regulatory or enforcement matters for yourself or others.

If you find yourself rationalizing that you deserve some special benefit, stop yourself. You are likely on the path to an ethical, or maybe even legal, misstep. You chose to run for office and are responsible for creating the possibility of the impact on your time.

As the Greek philosopher Demosthenes observed, "Nothing is so easy as to deceive oneself; for what we wish, we readily believe."

**Think about your values in public service in advance, as well as where your boundaries for ethical conduct are. This will help you avoid being tempted to cross the line in specific situations and fall prey to a dynamic of "situational ethics"—or the tendency to determine your ethical standards according to the situation.

Sorting through Ethical Dilemmas

If you find yourself faced with an ethical dilemma, the following questions may help you come to an answer:

- Which ethical values are involved in this decision (for example, trustworthiness, compassion, loyalty, responsibility, fairness, or respect)?
- Is this a situation in which ethical values are in conflict (right-versus-right dilemmas) or in which there is a significant personal cost associated with doing the right thing?
- What are the facts? What are the public benefits to be achieved or the public harm to be avoided by a particular decision? Is there a decision that does more public good than harm?
- What are your options? Is there a course of action that would be consistent with either both sets of ethical values (for right-versus-right dilemmas) or consistent with the ethical value and avoid the anticipated cost of pursuing the right course of action?
- Is one course of action more consistent with a value that is particularly important to you (for example, compassion or trustworthiness)?
- What decision best reflects your responsibility as an officeholder to serve the interests of the public as a whole?
- What decision will best promote public confidence in your agency and your leadership?

It can also be useful to think about common ethical dilemmas (or clearly improper) situations that arise for public officials and how you would handle them/what you would say.

What to Do?

Figuring out the kind of dilemma you are facing is the first step.

- **Personal Cost.** Does doing "the right thing" seem to involve a significant personal cost?
- **Right Versus Right.** Does the dilemma involve competing sets of "right" values?
- **Legal Issue.** Does the law provide an answer on what you must do? (Remember the law establishes only minimum obligations – just because something is legal doesn't mean it's ethical.)

For more information about public service ethics, visit www.ca-ilg.org/trust.

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INSTITUTE FOR LOCAL GOVERNMENT

Key Ethics Law Principles

FOR PUBLIC SERVANTS

Note that the following are not statements of law, but rather principles the law is designed to achieve. The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws. If an issue arises for you under these principles, consult your agency counsel.

PERSONAL FINANCIAL GAIN

Public officials:

- Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests (see reverse for list of types of financial interests).
- Cannot have an interest in a contract made by their agency.
- Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- Cannot influence agency decisions relating to potential prospective employers.
- May not acquire interests in property within redevelopment areas over which they have decision-making influence.

PERSONAL ADVANTAGES & PERKS

Public officials:

- Must disclose all gifts received of $50 or more and may not receive gifts aggregating to over $390 (2007-8) from a single source in a given year.
- Cannot receive compensation from third parties for speaking, writing an article or attending a conference.
- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- May only be reimbursed for actual and necessary expenses consistent with their agency's reimbursement policy.
- Cannot participate in decisions that may affect (positively or negatively) their personal interests.
- Cannot accept free transportation from transportation companies.
- Cannot send mass mailings at public expense.
- Cannot make gifts of public resources or funds.
- Cannot receive loans over $250 from those within the agency or those who do business with the agency.

GOVERNMENT TRANSPARENCY

Public officials:

- Must disclose their financial interests.
- Must conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Must allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- Must disclose information about significant ($5000 or more) fundraising activities for legislative, governmental or charitable purposes.

FAIR PROCESSES

Public officials:

- Have a responsibility to assure fair and competitive agency contracting processes.
- Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner or dependent children).
- Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings – such as land use permits – involving campaign contributors (does not apply to elected bodies).
- Cannot solicit campaign contributions of more than $250 from permit applicants while application is pending and for three months after a decision (does not apply to elected bodies).
- Cannot represent individuals before their agency for one year after leaving agency service.
- Must conduct public hearings in accordance with due process principles.

A Public Official's Conflict Of Interest Checklist

KEY CONCEPTS

- ✓ A public agency's decision should be based solely on what best serves the public's interests.
- ✓ The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- ✓ Having a conflict of interest does not imply that you have done anything wrong; it just means you have financial or other disqualifying interests.
- ✓ Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. Don't take that risk.

BASIC RULE

A public official may not participate in a decision – including trying to influence a decision – if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. Talk with your agency counsel 1) early and often 2) when an action by your public agency 3) may affect (positively or negatively) 4) any of the following:

- ✓ **Income.** Any source of income of $500 or more (including promised income) during the prior 12 months for you or your spouse/domestic partner.
- ✓ **Business Management or Employment.** An entity for which you serve as a director, officer, partner, trustee, employee, or manager.
- ✓ **Real Property.** A direct or indirect interest in real property of $2000 or more that you or your immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are located within 500 feet of the subject of your decision.
- ✓ **Personal Finances.** Your or your immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.
- ✓ **Gift Giver.** A giver of a gift of $390 or more to you in the prior 12 months to you, including promised gifts.
- ✓ **Lender/Guarantor.** A source of a loan (including a loan guarantor) to you.
- ✓ **Contract.** You or a member of your family would have an interest (direct or indirect) in a contract with the agency.
- ✓ **Business Investment.** An interest in a business that you or your immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth $2000 or more.
- ✓ **Related Business Entity.** An interest in a business that is the parent, subsidiary or is otherwise related to a business where you:
  - Have a direct or indirect investment worth $2000 or more; or
  - Are a director, officer, partner, trustee, employee, or manager.
- ✓ **Business Entity Owning Property.** A direct or indirect ownership interest in a business entity or trust of yours that owns real property.
- ✓ **Campaign Contributor.** A campaign contributor of yours (applies to appointed decision-making bodies only).
- ✓ **Other Personal Interests and Biases.** You have important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on your ability to make a fair decision.

WHAT WILL HAPPEN NEXT?

Agency counsel will advise you whether 1) you can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in.

EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Ask yourself whether members of the public whose opinion you value will question whether you can act solely in the public's interest. If they might, consider excusing yourself voluntarily from that particular decision-making process.

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Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg

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About the Author

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.

Table of Contents

Introduction

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the "ayes" and then asking for the "nays" normally does this. If members of the body do not vote, then they "abstain." Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body."

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member's desired approach with the words "I move … "

A typical motion might be: "I move that we give a 10-day notice in the future for all our meetings."

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion,** for example, "A motion at this time would be in order."
2. **Suggesting a motion to the members of the body,** "A motion would be in order that we give a 10-day notice in the future for all our meetings."
3. **Making the motion.** As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

"Motions to amend" and "substitute motions" are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a "motion to amend" or a "substitute motion" is left to the chair. So if a member makes what that member calls a "motion to amend," but the chair determines that it is really a "substitute motion," then the chair's designation governs.

A "friendly amendment" is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, "I want to suggest a friendly amendment to the motion." The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed,* the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on "hold." The motion can contain a specific time in which the item can come back to the body. "I move we table this item until our regular meeting in October." Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, "I move the previous question" or "I move the question" or "I call the question" or sometimes someone simply shouts out "question." As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a "request" rather than as a formal motion. The chair can simply inquire of the body, "any further discussion?" If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the "question" as a formal motion, and proceed to it.

When a member of the body makes such a motion ("I move the previous question"), the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item.* This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," or "I move the question," or "I call the question," or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it's pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the "no" votes and double that count to determine how many "yes" votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote "no" then the "yes" vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote "abstain" or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of "those present" then you treat abstentions one way. However, if the rules of the body say that you count the votes of those "present and voting," then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are "present and voting."

Accordingly, under the "present and voting" system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are "present"), but you treat the abstention votes on the motion as if they did not exist (they are not "voting"). On the other hand, if the rules of the body specifically say that you count votes of those "present" then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like "no" votes.

How does this work in practice?
Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are "present and voting." If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three "yes," one "no" and one "abstain" also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members "present." Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a "no" vote. Accordingly, if the votes were three "yes," one "no" and one "abstain," then the motion fails. The abstention in this case is treated like a "no" vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an "abstention" vote? Any time a member votes "abstain" or says, "I abstain," that is an abstention. However, if a member votes "present" that is also treated as an abstention (the member is essentially saying, "Count me for purposes of a quorum, but my vote on the issue is abstain.") In fact, any manifestation of intention not to vote either "yes" or "no" on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote "absent" or "count me as absent?" Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually "absent." That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is "no." There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, "point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be, "point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

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