# SECTION VI

## Ethics Mandates from the Los Angeles City Attorney

Clarification on the Neighborhood Council Meetings
Conflict of Interest in Public Contracting
How to Conduct a Public Meeting
Competitive Bidding

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## Clarification on Neighborhood Council Meetings

Neighborhood Councils recently asked questions relating to the circumstances under which Neighborhood Council Boards may hold community meetings, as well as questions about the circumstances under which, Neighborhood Council Board members may attend a training or community meeting without violating the open meeting requirements in the Brown Act. Because the City Attorney's Office and Department of Neighborhood Empowerment are dedicated to assisting Neighborhood Council's fulfill their goals and objectives, this handout is designed to assist you in determining which meetings and community events are not subject to the Brown Act. Many meetings and community events do not trigger the Brown Act. Primarily, the focus of the Brown Act is ensuring that a majority of a Neighborhood Council board or committee does not hold a private meeting to discuss board/committee business outside the public view.

**The following are examples of allowable meetings and events:**

*Option 1:* Holding a private meeting to discuss neighborhood council business with less than the board's or committee's majority required for taking action. For example having a private meeting with your City Council representative, a meeting between limited board/committee members on the same board, or a meeting with limited members from another Neighborhood Council. Since the bylaws vary for different Neighborhood Councils, please feel free to contact our Office so that we may explain how to calculate the number that are allowed to meet.

As long as the private meeting does not exceed the least number of people required to act on behalf of the board or committee, the meeting is not subject to the Brown Act, does not need to be open to the public and no notice or agenda is required.

*Option 2:* Holding a public meeting following all of the Brown Act rules (including agendas and public input) where everyone attends and discusses board business, such as your Neighborhood Council meetings or a joint meeting with another Neighborhood Council or another community group.

To hold a joint meeting with another Neighborhood Council board or committee and discuss board or committee business, the Brown Act requires that the meeting be noticed as a joint meeting of both bodies subject to the Brown Act. To hold a joint meeting with a private community group, the Brown Act simply requires that the joint meeting be noticed as a meeting of the Neighborhood

Council with an agenda disclosing that a private community group will be invited to participate. If you are having trouble creating an agenda for a joint meeting, please contact the Department or our Office for assistance. Once the agenda is finalized, the Department will officially post it at City Hall and on the Early Notification System.

*Option 3:* Hosting a social event/party where no business will be discussed, such as holiday parties.

All Neighborhood Council Board and committee members may attend social events with each other provided that board/committee members do not engage in a discussion regarding board/committee business with the board's/committee's majority required for taking action. The Brown Act does not require notice of social events be posted or be open to the public if no public funds are used to conduct the event.

*Option 4:* Attending a conference or training with other board members, such as City trainings or the Congress of Neighborhood workshops.

If a conference, training or similar gathering is open to the public and involves issues of general interest to the public, everyone may attend as long as the board's majority does not discuss among each other their board business while in attendance. All board and committee members may attend these types of conferences and trainings. The Brown Act does not require conferences and trainings to be noticed unless the training with board members is during one of your board meetings or at your board retreat.

Additional exceptions exist for holding meetings. The purpose of this announcement is not necessarily to be comprehensive, but to clarify any misunderstandings that may impede the lawful and vigorous functioning of Neighborhood Councils. As always, please contact our Office or the Department of Neighborhood Empowerment if you have any questions or concerns.

**The regional advisor for Neighborhood Councils in the South, Central, Harbor and West areas of the City is Deputy City Attorney Carmen Hawkins: carmen.hawkins@lacitv.org.**

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OFFICE OF THE CITY ATTORNEY
**NEIGHBORHOOD COUNCIL ADVICE DIVISION**

# GOVERNMENT CODE SECTION 1090, et seq.

## Introduction.

This handout discusses the specific conflict of interest concerns that arise when a neighborhood council spends its public funds, enters into a contract, or makes a recommendation regarding a City contract and a board member or committee member on the neighborhood council has a financial interest in that transaction. While other situations, e.g., the neighborhood council making advisory recommendations to the City on specific subjects, may also present conflict of interest concerns,[1] this handout focuses on situations involving contracting or the expenditure of public funds by neighborhood councils under Government Code section 1090 (also referred to as "Section 1090"). In addition, while this handout is prepared for neighborhood councils, the principles set forth herein apply equally to other boards that are subject to this law.[2]

In 2004, the City Attorney issued an opinion stating that Government Code section 1090, et seq., applies to board and committee members serving on the City's certified neighborhood councils. Section 1090 is one of the primary conflict of interest statutes applicable to public servants involved in the public contracting process and is a State law that prohibits public officials, including employees, from making a public contract in their official capacity when those persons also hold a private financial interest in that same contract.[3]

The California Attorney General's office oversees compliance with this law and violations of Section 1090 are subject to civil and criminal penalties. Thus, board and committee members serving on the neighborhood council should become familiar with this law and seek assistance from the Office of the City Attorney whenever such questions arise.

## Purpose.

The purpose of Section 1090 is to discourage self-dealing and ensure that public servants do not have divided loyalties.[4] Section 1090 developed from a body of decisions by the courts in what is referred to as the "common law." In *Thomson v. Call,*

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[1] *E.g.*, the California Political Reform Act, common law, City ordinances and, in the case of neighborhood councils, their bylaws and board rules may pertain.

[2] *Government Code* section 1090, a California statute, applies equally to, among others, "city council members", "commissioners", "board members", "officials", and "employees". Herein, reference is alternatively made to such persons to illustrate a point or as discussed in case law.

[3] *Government Code* section 1090 also apples to City Council members, commissioners, officials, and employees.

[4] *See, Breakzone Billiards et al. v. City of Torrance* (2000) 81 Cal. App. 4th 1205, 1230 and *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1170-1171 [citing, *Noble* v. *City of Palo Alto* (1928)].

the California Supreme Court explained the reasons underlying Section 1090 and stated that "no man can faithfully serve two masters whose interests are or may be in conflict …"[5] The State legislature codified this common law into Section 1090.

Generally, neighborhood council representatives are agents of the people and the constituents they represent. Section 1090 is intended to ensure that "every public officer be guided solely by the public interest rather than personal interest when dealing with contracts in an official capacity."[6] In interpreting the law, the courts caution public servants that they may not act in their official capacity to *influence* or *participate in* making a public contract when they simultaneously hold a private financial interest in the same contract.[7] The purpose of the conflict of interest laws and the conduct expected of public servants is captured by the California Supreme Court, quoting the U. S. Supreme Court:

> "The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. The broad proscription embodies recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning people when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, *the statute is more concerned with what might have happened in a given situation than with what actually happened.*"[8]

Thus, Section 1090 is also "aimed at … avoiding the appearance of impropriety…"[9]

**Application of Section 1090.**

Specifically, Government Code section 1090 states:

> "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*. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity." (Emphasis added.)

This law means that neighborhood council board members cannot be financially interested in any contract *officially* made by that body or board. Under Section 1090, the first determination that must be made is what type of financial interest exists. The type of financial interest that exists will determine what permissible activities are allowed by the person with the financial interest or the neighborhood council board. In general,

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[5] *Thomson,* 38 Cal. 3d at 647-648 [citing, *San Diego v. S.D. L.A.R.R. Co*., (1872) 44 Cal. 106, 113.
[6] *Id.* at 650.
[7] *Stigall,* 58 Cal 2d 565, 569; *Finnegan*, 91 Cal. App. 4th 572, 579 and *People v. Honig* (1996) 48 Cal. App. 4th 289, 314.
[8] *Stigall*, 58 Cal 2d 565, 570 *citing U.S. v. Mississippi Valley Generating Co* (1961) 364 U.S. 520. (emphasis added)
[9] *Honig,* 48 Cal.App.4th at 314.

if a financial interest exists, the entire board is prohibited from acting on the contract unless a legal exception applies.

There are several exceptions. There is an exception if the financial interest is a "remote interest" under Government Code section 1091. A "remote interest" requires the person with the financial interest to be disqualified from participating in the transaction but, upon disclosure of the financial interest in the neighborhood council's records, allows the neighborhood council board to enter into the transaction. In addition, there is an exception that exists if the financial interest is deemed a "non-interest" under Government Code section 1091.5. A "non-interest" means that the person with the financial interest may participate in the transaction, as well as the neighborhood council board, if in certain cases an appropriate disclosure is made.

Section 1090 applies to a variety of public officials and employees representing government agencies in California.[10] It "also applies to members of [governmental] advisory bodies if they participate in the making of a contract through their advisory function."[11] It applies to board members serving on the City's certified neighborhood councils because these boards spend public funds for their operations through contracts executed by the Department of Neighborhood Empowerment (DONE) for the benefit of neighborhood councils.[12] Moreover, Section 1090 applies to a variety of public contracts, including employment contracts, leases, sales of goods, consulting services, and development agreements. Neighborhood council boards regularly require contracts for their operations, including supplies, office space, and for neighborhood improvement projects. These contracts are executed in compliance with City contracting rules on their behalf.[13] By recommending the approval of a specific contract for services or neighborhood improvements, neighborhood council board members are part of the City's public contracting process.

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[10] *Stigall*, 58 Cal. 2d 565; *Thomson,* 38 Cal. 3d 633; *Bailey*,103 Cal. App. 3d 191; [council members]; *Honig*, 48 Cal. App. 4th 289 [elected state official]; *City Council of the City of San Diego v. McKinley* (1978) 80 Cal. App. 3d 204 [park board member]; *People v. Sobel* (1974) 40 Cal. App. 3d 1046 [a city employee]; and 46 Ops.Cal.Atty.Gen. 74, (1965) [contractors/consultants who perform a public function].

[11] *Conflicts of Interests*, California Attorney General's Office (pamp.) 2004, p. 68; 82 Ops.Cal.Atty.Gen. 126 (1999).

[12] Certified neighborhood councils are also referred to herein simply as "neighborhood councils" or "councils".

[13] Under the Neighborhood Council Funding Program, developed by the DONE, neighborhood council boards vote to approve all expenditures. Currently, under the Neighborhood Council Funding Program, the DONE prepares the appropriate written agreements for the neighborhood councils to ensure compliance with City contracting rules. City departments and agencies do not ordinarily prepare written agreements for purchases valued under $1,000.00. (*Los Angeles Administrative Code* section 9.5) Certified neighborhood councils, therefore, purchase goods for their operations through their Stored Value Cards or from petty cash disbursements unless goods are obtained directly through the City and its established vendors.

**"Making a Contract" Within The Meaning Of Section 1090.**

If a person is prohibited from participating in a transaction under Section 1090, the prohibition applies to the "making of a contract." Under Section 1090, a contract having been "made" does not simply refer to the point in time when a neighborhood council member or an official approves, or signs the contract. [14] It also includes when a member or an official, in their official capacity, participates during the preliminary stages of the contracting process.[15] That participation can include preliminary discussions, solicitation of bids, negotiations, and directly or indirectly influencing the decision to make a contact.[16] Thus, a neighborhood council board could be prohibited from entering into a contract if a board or committee member was financially interested in the matter and engaged in early negotiations or discussions of the contract.

> Mere membership on the board has import.
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> "California courts have consistently held that a public officer cannot escape liability for a [S]ection 1090 violation merely by abstaining from voting or participating in discussions or negotiations. [Citation.] Mere membership on [a] board or council establishes the presumption that the officer participated in the forbidden transaction or influenced other members of the council. [Citation.]"[17]
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> Courts have held that,
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> "[w]here section 1090 applies, it is an absolute bar to a board or commission entering into the prohibited contract. Even if the interested board or commission member abstains from any participation in the matter, [S]ection 1090 applies to prevent fellow board or commission members from being influenced by their colleague. [Citations.]"[18]
>
> Applying this principle to neighborhood councils, a neighborhood council board member with a financial interest who has influenced the board to enter into a contract, for example, cannot avoid a Section 1090 violation by resigning from the board just before it recommends approving the contract, or by not appearing at the meeting where the contract is approved.[19] Again, "[t]he purpose of the prohibition is to prevent a situation where a public official would stand to gain or lose something with respect to the making of a contract over which he could exercise some influence in his official capacity."[20]

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[14] *Stigall,* 58 Cal 2d at 571; *McKinley,* 80 Cal. App. 3d at 212; *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal. App. 2d 222, 237.
[15] *Stigall,* 58 Cal 2d at 569.
[16] *Id. at* 571; *Sobel*, 40 Cal. App. 3d at 1052.
[17] *Thomson,* 38 Cal. 3d at 649.
[18] *Thorpe* v. *Long Beach Community College District* (2000) 83 Cal. App. 4th 655, 659.
[19] *Stigall,* 58 Cal.2d 565.
[20] *Id.* (quoting, *People v. Vallerga* (1977) 67 Cal. App. 3d 847, 867-868, fn. 5).

**The Meaning Of "Financially Interested."**

Although Section 1090 is directed at an interest in a contract, the statute does not specifically define the term "financial interest." Thus, we look at case law to provide further guidance as to the meaning of the term and to understand how the courts have upheld the legislative intent of this statute.

In *City of Imperial Beach v*. *Bailey*, the court found that a city council member had a conflict of interest due to her ownership of a concession stand (Concession) on a municipal pier, which lease was coming up before the city council for renewal.[21] Council member Bailey had obtained her financial interest in Concession – a bait, tackle and refreshment stand – under an existing lease with the City of Imperial Beach before she became a councilmember. Although the lease came up for renewal after she became a council member, the court found that Section 1090 prohibited Bailey from exercising the "option" to renew the lease while simultaneously serving as a city council member. The court stated that:

> "it is conceded that Hazel Bailey's integrity is above reproach and we sympathize with her position of having to choose between remaining on the Council or continuing as owner of Concession. However, the purpose of [S]ection 1090 is not only to strike at actual impropriety, but to strike at the appearance of impropriety."[22]

The California Attorney General has identified two unique situations where it found a "financial interest" in a contract: 1) where a public entity board member requested reimbursement for a conference attended by a board member of the spouse and, 2) where a public entity entered into a development agreement with a developer.

Courts have generally agreed with, and have applied, the Attorney General's analysis when confronted with similar scenarios. For example, the courts have found that "a member of a board or commission *always* is financially interested in his or her spouse's source of income for purposes of section 1090. This is true even if the husband and wife have an agreement that their own earnings are to be treated as their separate property, since each spouse is liable for the necessities of life for the other [citations omitted]."[23]

And, in *Thomson* v. *Call,* the California Supreme Court held that Section 1090 was violated where a city council member for the City of Albany sold his land to the city through a third party corporate developer.[24] The developer, Interstate General Corporation (IGC), sought a zone change and use permit to allow denser housing development on property it owned on Albany Hill. As part of IGC's request, it also agreed to purchase property that it would convey to the City of Albany for a public park.

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[21] *Bailey,* 103 Cal.App.3d 191.
[22] *Id*, at 197.
[23] 78 Ops.Cal.Atty.Gen. 230 (1995); *Honig,* 48 Cal. App. 4th at 319 and *Thorpe,* 83 Cal. App. 4th at 659.
[24] 38 Cal. 3d 633.

Councilman Call had such a parcel to sell on Albany Hill and he sold it to IGC. The property was thereafter conveyed by IGC to the City for the park to fulfill the conditions of the zone change approval. Although Call technically sold his property under contract to IGC, not directly to the City, the Court found that section 1090 had been violated. It said "[a]s part of the transaction at issue Call sold his property to the City using IGC as a conduit. Whether we regard his interest as direct or indirect, it is clearly a pecuniary interest forbidden by section 1090 and by the decisions applying conflict-of-interest rules generally."[25]

Of significance, the benevolent purpose of the transaction – a public park carried no weight with the Court in the *Thomson* case. It found that "if the interest of a public officer is shown, the contract cannot be sustained by showing that it is fair, just and equitable as to the public entity."[26]

Courts have also found that it does not matter that the financial interest in the contract is immaterial or a small amount for section 1090 to apply. For example, in *People v. Honig*, an elected State official was prosecuted for using his position to steer Department of Education contracts to a non-profit organization employing his wife.[27] The court said that to be "'financially interested' in a contract within the meaning of section 1090 does not require that the prohibited interest have a material effect on the public official's source of income. Any interest, except a remote one, which would prevent the official from exercising absolute loyalty and undivided allegiance to the best interest of the state is prohibited under the statute [citation.]"[28] The court found that the fact that the officer's interest "might be small or indirect is immaterial so long as it is such as deprives the [state] of his overriding fidelity to it and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good. [citation]"[29] Indeed, the court added, "the prosecution [did] not have to prove fraud, dishonesty, or loss."[30]

Another example illustrating a financial interest can be found in *Fraser-Yamor Agency, Inc. v. County of Del Norte.*[31] There, the County (insured) procured insurance from an insurance company (insurer) that was brokered through the Fraser-Yamor Agency, Inc (agency). Fraser, a principal and major shareholder in the agency, also served as a Del Norte County supervisor, the insured. The court found that Fraser held a financial interest in the contract between the County and the insurance company and stated that "[h]is interest in the agency and in any contracts from which it derives a pecuniary

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[25] 38 Cal.3d at 646.
[26] *Id.* at p. 649; citing, *Capron* v. *Hitchcock* (1893) 98 Cal. 427 and *Honig*, 48 Cal. App. 4th 289, 314.
[27] 48 Cal.App.4th at 305-313.
[28] *Id*, at 328.
[29] *Id*. at 315.
[30] *Id*. at 322.
[31] *Fraser-Yamor Agency, Inc., v. County of Del Norte* (1977) 68 Cal. App. 3d 201.

benefit is clearly a financial one because the success of the agency inures to his personal benefit."[32]

Finally, in *People v. Watson*, a case involving a City of Los Angeles Harbor Commissioner, the court found a financial interest based on a debtor-creditor relationship.[33] This case involved bringing the vessel *S.S. Princess Louise* from Seattle to the Port of Los Angeles to serve as an attraction and a restaurant at the port. Charles Sutton, a local restaurateur, spearheaded the effort and needed to lease space from the Port of Los Angeles to dock the ship. Sutton also sought a liquor license as part of the business. City Harbor Commissioner Watson loaned Sutton's corporation $10,400 to acquire a liquor license and, at a commission meeting, Watson voted to approve the Los Angeles port lease to dock the ship.[34] The floating restaurant opened for business in September of 1966 and, thereafter, Sutton repaid the loan.

In affirming Commissioner Watson's conviction for violation of sections 1090 and 1097, the court appeal upheld the use of the following jury instruction:

> " 'financially interested' means any financial interest which might interfere with a city officer's unqualified devotion to his public duty. The interest may be direct or indirect and includes any monetary or proprietary benefits, or gain of any sort, or the *contingent possibility* of monetary or proprietary benefits." (Emphasis added/portions omitted)[35]

As it considered Watson's appeal, the court stated that "[w]e must disregard the technical relationship of the parties and look behind the veil which enshrouds their activities in order to discern the vital facts [citation]. However devious and winding the trail may be which connects the officer with the forbidden contract, if it can be followed and the connection made, a conflict of interest is established."[36]

As we explain below, however, not every "financial interest" constitutes a prohibited interest that would prohibit a board member or the board from acting on a contract. That statute identifies exceptions that would allow board or board member participation based upon the type of interest held.

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[32] *Id.* at 215. [The court left unresolved whether Fraser's financial interest might be deemed a *remote interest* under section 1091.]

[33] *People v. Watson* (1971) 15 Cal. App. 3d 28.

[34] Although Commissioner Watson's wife was the putative owner of the engineering company that loaned Sutton the money for the license - he had transferred his interest in the company to her before his appointment to the Board of Harbor Commissioners – Sutton, nevertheless, delivered a check that was endorsed by Commissioner Watson.

[35] 15 Cal.App. 3d at 37.

[36] *Id*. at 37.

**Exceptions.**

**Section 1091: Remote Interest.**

Section 1091 defines the circumstances when a public board may take action despite the fact that one or more of its members holds a financial interest in a contract. These statutorily described circumstances are known as *remote* interests. Section 1091(a) states:

> "An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member … *if* the officer has only a remote interest in the contract and *if* the fact of the interest is disclosed to the body or board of which the officer is a member and noted in its official records, *and* thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose *without counting the vote of the officer or board member with the remote interest*."[37] (Emphasis added)

Thus, even if a board member has what is considered a "remote interest," the board may still enter into the contract so long as any member with a financial interest actively disqualifies him or herself from voting.[38] Section 1091(b) lists 14 types of interests which are statutorily defined as being "remote." Examples of remote interests that might apply to neighborhood councils would include an officer or employee of a non-profit corporation or a landlord or tenant of a contracting party.

Section 1091(b) also sets forth the way that a council, commission, or board may vote to approve a contract without the participation of its financially interested member. Besides abstaining from any participation in the contracting process, the member with the financial interest must specifically disclose the nature of the conflict and have it noted in the official records if a vote is contemplated at a public meeting.

Applied to neighborhood councils, this would mean that a neighborhood council board is permitted, for example, to recommend approval of a contract with a non-profit corporation when one or more of its board members also serves as "an officer or employee of [the] nonprofit corporation" since the interest involved here is statutorily defined as a *remote* financial interest.[39] The only requirement in this instance is that the board member with the financial interest abstains from participation.

***Section 1091.5: Noninterests*.**

Section 1091.5 defines the circumstances when a board member's financial interest is statutorily deemed a "noninterest." An example of a noninterest that might apply to neighborhood councils would include: " . . . a recipient of public services generally

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[37] *Government Code* section 1091(a). [portion omitted].
[38] *Conflicts of Interests*, California Attorney General's Office (pamp.) 2004, p. 82.
[39] *Government Code* section 1091(b)(1).

provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board."[40] If a neighborhood council member is found to hold a noninterest, the board member (as well as the entire board) may participate in making the contract.[41]

**Remedies and Penalties.**

Violations of the statute can potentially result in civil remedies and/or criminal penalties.

***Civil Remedies: Government Code section 1092.***

Contracts made in violation of any of the provisions of Section 1090 are "invalid" or void.[42] Any payment made by the City on a void contract is recoverable and disbursements and future payments on the contact are not enforceable.[43]

***Criminal Penalties: Government Code Section 1097.***

Violations of the provisions of Section 1090 are also "punishable by a fine of not more than one thousand dollars ($1,000), or by *imprisonment in the state prison*," and a person can be "*forever barred from holding any office in this state*."[44] (Emphasis added)

**Conclusion.**

Invariably, it is necessary to evaluate the factual circumstances that pertain when a conflict of interest question arises. When answering such questions intuition will rarely suffice. Therefore, neighborhood council board members are encouraged to seek assistance from the City Attorney's Office to avoid conflict of interest problems.

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[40] *Government Code* section 1091.5(a)(3).
[41] *City of Vernon v. Central Basin Municipal Water District* (1999) 69 Cal. App. 4th 508, 515 (1986); 83 Ops.Cal.Atty.Gen. 246, 247 (2000); 78 Ops.Cal.Atty.Gen. Cal. 362, 369-370 (1995).
[42] *Government Code* section 1092; *Millbrae Association for Residential Survival,* 262 Cal. App 2d at 236. *Accord, Thompson,* 38 Cal. 3d at 646.
[43] *Government Code* section 1095.
[44] *Government Code* section 1097.

OFFICE OF THE CITY ATTORNEY
**NEIGHBORHOOD COUNCIL ADVICE DIVISION**

# CONFLICT OF INTEREST LAWS GOVERNING NEIGHBORHOOD COUNCILS

## THE POLITICAL REFORM ACT

## GOVERNMENT CODE § 1090

## COMMON LAW BIAS

Board members of Neighborhood Councils who are given governmental decision-making authority, must be mindful of the following conflict of interest law: The Political Reform Act of 1974, as amended (Government Code § 8100, et seq.), Government Code § 1030 et seq, and the common-law conflict of interest rules. Because the City Council exempted the Neighborhood Councils from being required to adopt a conflict of interest code,[1]Neighborhood Council board members are not required to disclose their financial interests by filing a disclosure statement (Form 700) and are subject to the City's Governmental Ethics Ordinance (Los Angeles Municipal Code § 49.5.1 et seq.) However, compliance with state and common law conflict interest laws is still required. A brief explanation of these laws follows.

**The Political Reform Act.**

The Political Reform Act is a state law that sets up rules and regulations to ensure that governmental officials are free from bias caused by their own financial interests and act in an impartial matter.

***Basic Prohibition.*** Under the Act, public officials are disqualified from participating in government decisions in which they have financial interest. There are four basic tests to ascertain whether a Neighborhood Council board member might have a financial interest under the Act.

**Examples of a disqualifying interest:**

- The Neighborhood Council board member makes, participates in making, or uses his or her official position to influence the making of a decision;

- the Neighborhood Council board member has a statutorily defined economic interests (his or her own finances or those of members of his or her immediate family, investment in a business, interest in real property, source of income or gifts, management position in a business) that may be affected by the decision;

- It is reasonably foreseeable that the decision will have a *material financial effect* on the Neighborhood Council board member's economic interest;

- The decision will affect the Neighborhood Council board member's economic interest in a way that is distinguishable from its effect on the public generally or a significant Segment on the public.

[1] Los Angeles Administrative Code § 2.20.1

A Neighborhood Council board member who is disqualified must abstain from making, participating in making or attempting to use his or her official position in any way to influence the government decision.

***Persons Covered.*** The Act treats "members of local governmental agencies" as public officials. Public officials who make, participate in the making of, or influence or attempt to influence a governmental decision must comply with the Act's provisions. Neighborhood Councils have been treated as "local governmental agencies" and board members as "public officials" for the purposes of the Act.[2]

***Participation in decision-making.*** Neighborhood Councils are advisory bodies. Their role is to make recommendations to the various City decision-makers, including City boards, commissions, City Council Committees and the City Council. City Charter § 907. This role falls within the "make, participate in making, or attempting to influence a government decision" provision of the Act. Since the Neighborhood Councils have been delegated the authority to make "governmental decisions," even the board member's votes on "non-governmental" or purely advisory recommendations will be subject to the conflict of interest provisions.[3]

***Economic interests covered.*** What is a financial interest is often complicated and fact-based, but there are basic types of economic interests that the Act covers:

- A business entity in which a Neighborhood Council board member, or his or her immediate family, owns an investment or in which the Neighborhood Council board member is an officer or director or holds a management position in that business entity;

- real property in which a Neighborhood Council board member or his or her, immediate family, owns interest;

- any person or entity that is a source of income or loans to the Neighborhood Council board member or spouse;

- any person or entity that has given the Neighborhood Council board member a gift within the last year; or

- a Neighborhood Council board member's personal expenses, income, assets or liabilities, including those of his or her immediate family.

***Business investments and business positions***. An investment of **$2000** or more in a business entity by a board member, his or her spouse or dependent children is considered an economic interest. If a board member is a director, officer, partner, trustee, employee or holds a position of management in a business entity that is also considered an economic interest.

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[2] Making recommendations as to whether the City should not enter into a contract will also trigger the Act's requirements. In this instance, this means making a recommendation about a specific contract which is coming before the City for action or recommending qualifications/specifications for a city contract. Merely advising the City as to whether, for example, the City should pave a certain street or install lighting, which decisions might ultimately result in the City entering into a contract for those services, would not trigger the Political Reform Act requirements for the Neighborhood Council providing this advice.

[3] Thus, a board member who makes "governmental decisions" must also be aware of, and comply with, the disqualification rules even when making a purely advisory recommendation, for example, to a City Council Committee or Area Planning Commissions regarding a conditional use permit for a project loaded within the boundaries of that Neighborhood Council.

***Real property.*** An investment of **$2000** or more in real property by a board member, his or her spouse, or his or her dependent children or anyone acting on his or her behalf, is an economic interest.

***Sources of income and gifts.*** The receipt by a board member of income of **$500** or more from an individual or organization within 12 months prior to the decision in question is an economic interests. Gifts totaling **$440** or more received from a single source within 12 months prior to the decision is an economic interest.[4] This gift limit is valid through 2012.

***Personal financial effects.*** Expenses, income, assets or liabilities of board members or immediate family are considered an economic interest if those expenses, income, assets or liabilities are likely to go up or down by **$250** as a result if the decision at issue.

Once a board member determines that he or she has an economic interest, the next step is to determine whether the decision will have a direct or indirect impact upon the board member's interest and whether it is reasonably foreseeable that the decision will have a material effect on the board member's economic interest.

***Direct v. indirect interest.*** Whether a particular impact is material or not also depends upon whether the economic interest is directly or indirectly affected by the decision. A direct interest is generally one that is the subject of the decision; an indirect interest is one that may be impacted because of some connection or relation to the decision.[5] A direct interest is more likely to create a greater risk of conflict of interest than an economic interest that is indirectly involved in the decision.

***Foreseeability and materiality.*** To have a conflict of interest the effect on the board member's economic interest must be foreseeable (in other words, likely to occur) and be considered "material." In other words, a conflict of interest results if a board member can reasonably predict that his or her decision on a particular matter will have some economic impact (positively or negatively) on his or her economic interest. The Act sets up some basic thresholds to determine whether an economic interest is material:

***Business investments and business positions.*** As a *general* rule, if a decision directly involves a business entity in which the Neighborhood Council board member has an interest, the board member must disqualify himself or herself. However, if the only interest in the company is less than **$25,000** in stock, the board member may still be able to participate in the decision after a detailed examination of the state's regulations.

If the decision indirectly involves a business entity in which the board member has an interest, a decision's impact would be material if, for large companies such as Fortune 500 companies, the impact on the interest would result in an increase or decrease of the business' gross revenue

[4] Note: The gift limit is adjusted for inflation every two years. Gov't Code § 89503 (f).

[5] For example, if a Neighborhood Council board member owns a business that is subject to a permit or approval about which the Neighborhood Council is making a recommendation that is a *direct* impact of that economic interest. If a Neighborhood Council board member owns a business that is located more than 500 feet away from a piece of property that is seeking, for example, to obtain conditional use approval to sell alcoholic beverages about which the Neighborhood Council is making a recommendation, the decision potentially has an indirect impact on the economic interest, i.e., the business of the board member.

of **$10,000,000** or more in a fiscal year; or results in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of **$2,500,000;** or results in an increase or decrease in the value of the business entity's assets or liabilities of **$10,000,000** or more.

At the other extreme, for smaller companies the impact is material if the decision would result in an increase or decrease in revenues of **$20,000** or more or increase or reduce expenses by **$5000** or more in a fiscal year, or result in an increase or decrease in the value of its assets or liabilities by $20,000 or more.[6]

***Real property.*** If the decision affects a board member's property which is located **within 500 feet** of the boundaries of the property subject to the decision, disqualification from acting is generally required *unless* the decision will have no financial impact on the property. If the board member's property is located **more than 500 feet,** there is a presumption that the decision will not have a material financial effect. However, that presumption can be rebutted by proof that there are specific circumstances that would make it reasonably foreseeable that a financial effect will result from the presumption. Leasehold interests may also implicate the conflict of interest rules and have to be evaluated on a case-by-case basis.

***Sources of Income.*** If the decision will have **any** financial effect upon an individual who is a source of income for the board member and that source is directly involved in the decision, the effect is determined to be material. The most common source is the employer of the board member or spouse. If a board member or his or her spouse owns 10% or more of a business, clients of that business may also be sources of income.

However, if the source of income is indirectly involved in the decision, application of the state's regulations on the particular facts of this source is required to determine if the board member has to recuse him or herself from acting on the matter.

***Distinguishable from the public.*** Even if a board member's economic interest is foreseeable and material, he or she does not have a legal conflict of interest unless the decision's impact on his or her economic interest is *different* from the general public. In other words, if a board member is participating in a decision on an issue that will affect the general public's financial interests in the same manner as his or her own interests, even though the decision will have a material economic impact on the board member's financial interest, it does not create a conflict of interest. Under this rule, the decision must affect the board member's interest in *substantially the same manner* as the interests of the public.

An example of this would be if the City is embarking upon a plan amendment and zone change for a community plan area and a board member's property is subject to a zone change as is every other property within the community plan area. Although the board member's property is directly affected by the zone change, the property is impacted in substantially the same manner as other members of the public since all are being rezoned, so there is no conflict of interest requiring recusal. The state has developed specific percentage and numerical thresholds for determining when a group of people constitute a significant number to make a determination whether a decision affects the public in the same manner.

[6] The Political Reform Act also describes the impacts of other businesses that fall *between* these parameters, which are not discussed here.

**Decisions related to contracts - Government Code § 1090, et seq.**

In addition to the requirements of the Political Reform Act, state law contains special rules governing conflicts of interest relating to government contracts. A Neighborhood Council board member may not be *financially interested* in *any City contract* that he or she is involved in making. Thus, any participation by a board member in the process by which a contract is developed, negotiated or approved, *including making* a *recommendation on the contract,* is a violation of Government Code § 1090 if the board member has a financial interest in that contract. **Also, if the board member has a financial interest in a contract, the *entire* Neighborhood Council board might not be able act on the matter.**

However, there are some interests called "remote interests" which would disqualify a board member but not the entire Neighborhood Council board. Gov't Code §1090 prohibitions apply to oral as well as written contracts. Financial relationships in a contract. would include, but are not limited to: employee of a contracting party, attorney, agent or broker of a contracting party, supplier of goods or services to a contracting party; landlord or tenant to a contracting party; officer, employee or board member of a nonprofit corporation of a contracting party. This topic is discussed in greater detail in a later section of this Manual.

**Common law conflict of interest rules.**

Basic principles of bias and conflict of interest rules that the courts have developed over time (common law) also apply to Neighborhood Council decisions even if the statutory rules may allow a board member to participate in an action.[7] As the Attorney General has concluded, "[t]he common law doctrine against conflicts of interest . . . prohibit public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." 64 Ops. Cal. Atty Gen 795. As stated by the court of appeal, "[a] public officer is impliedly bound to exercise the powers conferred on him with diligence and primarily for the benefit of the public." *Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51.

This doctrine applies in situations involving both financial *and* nonfinancial interests. This means that simply having a personal relation to the matter could be construed as tainting a board member's decision-making because he or she is perceived to be biased or making the decision based on his or her personal interest, rather than for the good of the public.[8]

However, having general personal views and opinions about a matter is generally not sufficient to show bias. *Andrews v. Agricultural Labor Relations Board* (1981) 28 Cal. 3d 781. The mere appearance of bias is generally not sufficient for disqualification; but a disqualifying bias may be found if a showing can be made that a public officer has a specific prejudice against a person affected by a decision or a showing that a public officer's decision making ability is so impaired such that s/he cannot render a decision based on appropriate grounds. *Id.* at 792. Thus, Neighborhood Council board members should always be alert to whether their private interests, whether financial or otherwise, would be enhanced by any particular action they take on an item

[7] Although Los Angeles City Charter § 222, contains its own conflict of interest provisions based on an "appearance standard" these standards for disqualification are not applicable to Neighborhood Council board members. However, Neighborhood Councils are free to develop their own appearance standard and ethics rules in their bylaws.

[8] Even without a financial interest, the public officer must have some personal advantage or disadvantage at stake. See, e.g., *Clark v. City of Hermosa Beach* (1996) 48 Cal. App 4th 1152;88 Op. Atty.Gen Cal 32 (2005).

before them. Although not legally required, Neighborhood Council members should avoid even the appearance of bias to avoid allegations that might cause the integrity of the neighborhood council and its members to be questioned.

**Penalties.**

Violations of the Political Reform Act and Government Code § 1090 can carry significant penalties. [9]

Violations of the Political Reform Act can result in civil actions, criminal prosecution and/or administrative sanctions, injunctive relief or in some cases, prohibition against holding future elective office, depending upon the nature of the violation and the jurisdiction of the enforcement agency.

Violations of Gov't Code § 1090 are prosecuted as a felony and a conviction could, in addition to the imposition of a criminal fines and potential imprisonment, result in a lifetime ban from holding any public office in the State of California. In addition, contracts that are entered into in violation of this statute are void as a matter of law.

Finally, any person can file suit in civil court alleging violations of the Act.

**Identifying conflicts and disqualification.**

Because severe penalties may apply to a Neighborhood Council board member for violations of the conflict of interest laws, it is important that board members identify their economic interests that may pose potential conflicts. The eight part test set forth earlier should help board members identify what type of economic interests they have.

If a board member has either an economic interest in a decision that requires disqualification or is disqualified due to the application of the "common law doctrine" of a conflict of interest, the board member must disclose the interest which is the subject of the conflict as well as the fact that he or she is disqualifying himself or herself from any participation in the decision. The board member also may not do anything to influence the decision.

If a board member is disqualified from acting on a meeting agenda item and he or she is present at the meeting, he or she should make a public announcement identifying the economic interest which is the subject of the conflict and the fact that he or she is disqualified from any participation. After announcing the recusal from participation, the board member should excuse himself or herself and leave the room while that item is pending.

**Summary.**

[9] Note: The City Attorney's Office cannot defend or indemnify a board member who is charged, either civilly or criminally, with a violation of either the Political Reform Act of Gov't Code § 1090. In addition, regarding the attorney-client privilege the privilege applies to confidential communications between the attorney and the client. Although the City Attorney is the legal advisor to the Neighborhood Council board, the City's client is the municipal corporation, the City Attorney's Office is willing and able to assist individual Neighborhood Council board members with legal advice, the advice given may be disclosed to the Neighborhood Council board and to any other City entity.

Any time any City business is before a Neighborhood Council board member that involves:

- a business in which he or she or a member of his or her family has an investment;
- an entity of which he or she is an officer or director or holds some position of management;
- real property in which he or she or a member of his or her family has an interest;
- a source of income to him or her or a member of his or her immediate family;
- a source of gifts to him or her; or
- any person or entity with which he or she has a relationship other than in his or her capacity as a City official *(e.g,* a friend, person with whom he or she has a business relationship or an organization in which he or she holds some position of importance),

board members should contact the City Attorney assigned to his or her Neighborhood Council for advice. [10]

You may also seek advice from the Fair Political Practices Commission (FPPC) at their toll free help line at 1-866-ASK-FPPC, or may ask for a formal written opinion.[11]

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[10] The City Attorney's office generally will not provide information relating to allegations of conflict of interest matters relating to third persons (persons other than those making the inquiry); only the board member who is concerned about his/her own economic interest should contact the City Attorney's Office. The one exception is that any board member can and should inquire about the ability of its board to enter into a contract that might implicate Gov't Code § 1090.

[11] Formal written opinions take a minimum of 21 days but *only* written advice from the FPPC provides immunity from prosecution if acting with that advice.

OFFICE OF THE CITY ATTORNEY
**NEGHBORHOOD COUNCIL ADVICE DIVISION**

# HOW TO CONDUCT A PUBLIC MEETING

As a Neighborhood Council which operates in a representative capacity and is subject to the open meeting laws of the state of California (The "Brown Act") it is important to conduct your meetings efficiently and in a manner that is fair and inclusive and leaves one with the impression that everyone was treated fairly and objectively. Since the bulk of your Neighborhood Council work is accomplished at regular, and sometimes, special meetings of your entire board, or committees, it is important to know how to effectively conduct a public meeting.

## Professionalism.

It is important that members of the public, your stakeholders and fellow board members respect the process. For them to do that, your meetings should be conducted in a professional manner to demonstrate that the board members are taking their roles as Neighborhood Council leaders seriously. Your Neighborhood Council President is the leader chosen to guide your Neighborhood Council and the tone of your Neighborhood Council will be delivered from the leadership of the person you elect or select as President. Your President, however, has no greater authority than granted by the board and your board rules and every board member has an equal vote on matters that come before them.

If your President is new to conducting meetings, he or she should take advantage of the online training programs that are available on the Department of Neighborhood Empowerment website. Professional courtesy to one another and to members of the public and stakeholders is a must. The President or Chair must ensure that such courtesies during public meetings take place. While it is appropriate for your members to disagree and indeed, heartily debate issues, those debates should not devolve into a shouting match or worse, as the productiveness of your meetings will soon deteriorate.

At every Neighborhood Council meeting, individual board members should be prepared for the meeting, and the President should provide an opportunity for each board member to weigh in on the issue at hand. Members of the public and your stakeholders should be able to understand what is going on at the meeting and the decision making process.

While not required, if your Neighborhood Council has developed specific rules about how meetings are to be conducted, those should be explained in the beginning of the meeting, after it has been called to order by the Chair or President. Those "ground rules" might include an explanation of the order of agenda items, if there are any speaker time limits, how time limits will operate, and in the case of a presentation of a matter, the order of the presenters, etc. This should be done at the beginning of every meeting to ensure that people know and understand these ground rules and as a reminder to others.

Routine items, such as the approval of Minutes, may be handled by a "consent" motion (no formal vote need be taken) unless there are corrections to be made to the minutes.

**Knowledge.**

It is important that all of your board members understand the rules under which your Neighborhood Council operates. Thus, all board members should be familiar with and have their own personal copies of your Neighborhood Council's bylaws and any other standing or procedural rules. [1] A *basic* understanding of parliamentary rules is also helpful in conducting your meetings, but keep in mind that not all parliamentary rules of procedure will necessarily apply to your Neighborhood Council, because as a City entity, meetings are conducted differently than those in general assemblies. [2] The Department has informational pamphlets about parliamentary procedures that can assist your board members. Your public meeting will be governed by the Brown Act. Gov't Code § 54950 et seq. All Neighborhood Council board members should review the materials that the Department and the City Attorney have provided, should attend the training classes offered and have a working knowledge of the Act to avoid inadvertent violations of the law. Your board should have a mechanism to educate new board members to their Neighborhood Council positions and ensure that they have been provided training materials.

**Conflicts of interest**.

Be alert to potential conflicts of interests on upcoming agendas that might affect your ability to participate in the discussion and action of a particular item. Not being able to vote on an item also may affect the quorum necessary for the board to act on the item. Should you be required to recuse (not participate or vote on an item) yourself from an item because of a conflict, you should notify your Board President or Secretary as soon as possible. At the meeting, if there is an item that you may not participate in due to a conflict of interest, you must make a brief public announcement identifying either the economic interest or the personal interest under the common law rules that require your recusal, and leave the room while the matter is pending. You may return to the meeting and fully participate in the meeting after the item has been dispensed with.

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[1] If your Neighborhood Council has not yet adopted procedural rules of order, you may wish to consider doing so as these rules can help guide your board as you conduct your public meetings. Rules of Order generally set forth information, including but not limited to, election of officers, meeting days and time, who presides over the meeting in absence of the President, the usual order of business that will take place at meetings, how special meetings are called, how committees are created, how votes are taken, whether Neighborhood Council board members may "abstain" from voting, how public comment is taken, etc.

[2] For example, while Robert's Rules of Order would allow a member of an assembly to make a motion from the floor, Neighborhood Councils are governed by a board which takes action on items, and thus make the motions that move an item forward.

**Preparation.**

Be familiar with the issues that are coming up at your meeting so you can make an informed decision and avoid "voting with the pack." Your meetings will run more smoothly and your Neighborhood Council will be considered an effective advocate for your community by both the public and the City decision makers that you are advising, if your board members understand the issues at hand and are able to engage and debate the issues at the meetings. If materials are disseminated before your meetings, it is essential that all Board members review them before the meeting so that you are ready to engage in discussion on the item.

**Meeting space and setup**.

Be familiar with your meeting space needs so that you can comfortably accommodate all members of the public who wish to attend your meetings. If you need special equipment (video, audio, speakers, translation devices) make sure you contact Department staff early enough so that they can accommodate your request. Make sure your meeting space complies with the Americans with Disabilities Act and is accessible to the disabled. If in doubt, contact the Department who can seek assistance from the City's Department of Disability. For safety purposes, know where the emergency exits are at your meeting facilities and inform your local law enforcement agency of your meeting locations. If need be, if you anticipate problems at any particular meetings, you should request a member of the Los Angeles Police Department to be present, which may deter unruly conduct.

**Regular and special meetings.**

Under the Brown Act, you can have regular or special meetings. Special meetings may be called and the agenda must be posted within 24 hours of the meeting. Notice of the special meeting must be delivered to each Neighborhood Council board member and the notice must contain the description of the topics that will be discussed and acted upon at the meeting. Special meetings should be called for a specific purpose, and no other business other than that for which the special meeting was called, may be acted upon.[3] The standard meeting procedures discussed below may apply to either a special or regular meeting.

**Standard meeting procedures.**

Under the Plan and Regulations governing the citywide system of Neighborhood Councils, the governing body ("NC board") makes its decisions at regular and special meetings of the Neighborhood Council. Thus, the public perception of the effectiveness of your

[3] Special meetings are generally those meetings "held at a time different from that of any regular meeting, and convened only to consider one or more items of business specified in the call of the meeting." See, Robert's Rules of Order, 10th Ed. § 9, p. 89; See also, Gov't Code 54956.

Neighborhood Council is based, in large part, on the Neighborhood Council's conduct at meetings. At a minimum, it is important to treat everyone fairly and objectively and each meeting should be run for the benefit of the person who has never before attended one of your meetings. The following is a standard meeting format, followed by many city commissions:

**Opening the meeting.**

**1.** The President calls the meeting to order.[4]

**2.** The Secretary will call the role and identify whether there is a quorum present

**3.** The President or Secretary reviews the NC board's procedures at the beginning of each meeting (This may include use of speaker cards, time limits for public comment, how public comment will be taken, etc.)

**4.** The President announces any changes to the agenda (whether items will be taken out of order/continued etc.)

**Conducting the meeting.**

**1. Follow the agenda**. Under the Brown Act, the board can only "*discuss, deliberate or take action"* on items that are listed on the agenda. Your President should ensure that discussion on each item by your board does not stray too far afield from the topic that is listed on the agenda. The President should announce and describe each item that is being discussed and acted upon. For each item, the President should invite questions from the Board, open the item for public comment, close the public comment period, and then open the item for discussion by the board. All board members should be given the *opportunity* to weigh in on the issue. The President should govern the flow of discussion and invite the board members to comment.

**2. Public hearings.** On occasion, your board may wish to hold a public hearing on a particular development project, or other matter in which there are proponents and opponents who wish to present their position on the matter for your board's consideration and/or formal recommendation to the City's decision makers. These may include hearings that may in the future be delegated to you by the City Council pursuant to City Charter § 908. Minimum rules of due process may apply to assure that individual rights to be heard are not implicated. Again, your Neighborhood Council may wish to adopt Rules of Order to determine how your public hearings will be conducted, how time limits (if any) are to be established, the order of testimony, etc. An example of a format where a developer

[4] Some Neighborhood Councils open with a Pledge of Allegiance or Invocation. These are optional. However, be aware that the use of Invocations may not be sectarian. See, *Rubin v. City of Burbank* (2002) 101 Cal. App. 4th 1194 (rev. den. 2002 Cal Lexis 8622).

("applicant") is proposing a project includes the following steps:

**1.** The President announces the matter and opens the public hearing and identifies the order in which "testimony" will occur and any applicable time limits.

**2.** The "applicant" makes a presentation on the project.

**3.** NC board members may ask questions of the "applicant."

**4.** Identified "opponents" of the project may speak; if none, public comments may be taken on the project.

**5.** "Applicant" is allowed to present a rebuttal, if any, to comments.

**6.** The President closes the public hearing on the item.

**7.** The President invites discussion from the board and by motion and a second to that motion, a "vote" or "recommendation" regarding the project, if sought, is taken.

**8.** After the vote or recommendation, the President announces the results. (Ex: "The motion [carried/failed]. The recommendation of the board will be to_____the project."

**3. Making decisions.** Your actions should be done publicly at the meeting pursuant to the Brown Act. Oral or hand votes can be taken from all the NC board members and your Secretary or President should announce the results orally after the motion is acted upon. Your board Rules of Order should determine whether board members may abstain or not from voting on motions coming before it.

**Maximizing the meeting potential.**

Holding an effective meeting will help your Neighborhood Council reach its potential and effectively utilize your volunteer board resources. In effective meetings, members of the board focus on the subject under consideration in an effort to reach a conclusion--either through consensus or by majority vote. The President must be able to keep fellow board members from focusing on personalities, or issues that have nothing to do with the item before it. The President should ensure that there is an open dialogue and opportunity to be heard by all the parties: applicants, opponents, stakeholders, members of the public and fellow Neighborhood Council board members. The following are guideposts [5] that will

[5] These ideas were presented in the League of California Cities, Planning Commissioner's Handbook, 2000.

help any Chair or President run an effective meeting and maximize the potential of your Neighborhood Council:

1. **Start the meeting on time.**

2. **State the reasons for the meeting** (Opening statement of the NC meeting and that there are items for consideration/action). Inform the attendees of any time restraints

3. **Helpful Hints:**

- Ask for clarification and restraint when someone rambles or deviates the discussion.
- Ask to hold off new topics while another is under discussion.
- Constructively evaluate an idea not yet accepted before totally dismissing it.
- Get back to people when you have asked them to wait.
- Keep the public informed of the place on the agenda and what stage it is at.
- Prevent people from talking at the same time.
- Protect fellow board members and the public from verbal attacks by others.
- Keep comments directed to the Chair, not between members, stakeholders or members of the public.
- Restate motions before they are voted upon.
- Keep an eye on the clock and signal, in advance, that the meeting deadline is about to end.
- Keep on the schedule, be tactful.
- Call for a break during long meetings and reconvene on time.

4. **Facilitate discussion by:**

- Asking for suggestions from the group as a whole.
- Checking whether a suggestion is acceptable to those who expressed concerns.
- Encouraging incomplete or tentative ideas.
- Attempting to obtain consensus.
- Keeping the discussion focused.
- Intervening when members disagree.
- Not using powers of the chair unfairly.
- Remaining impartial during heated debate.
- Probing for the concern behind a question.

5. **At the close of the meeting:**

- Summarize the results or decisions of the meeting.
- Indicate follow-up actions to be taken and by whom.
- Indicate when the next meeting will take place.
- Thank the members and the public for their attendance.

**Conclusion**.

While there is no one way to conduct any particular meeting, we hope this guide will establish some basis parameters and suggestions to help you more effectively conduct your meeting.

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# COMPETITIVE BIDDING AND GENERAL REQUIREMENTS OF CITY CONTRACTS

Office of the City Attorney – Neighborhood Council Advice Division

AB 1234 ETHICS TRAINING

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## Basic Overview

Neighborhood councils have been given the authority to engage in financial transactions by making expenditures of $1000 or less per transaction via their "shared value card." However, neighborhood councils have not been given the authority to enter ("execute") contracts for certain types of vendor contracts, leases or personal services agreements. Those should be executed on behalf by the General Manager of the Department of Neighborhood Empowerment ("DONE") for the benefit of neighborhood councils (as in the case of neighborhood council leases, via the Neighborhood Council Leasing program) and in compliance with the rules and regulations on City contracts as provided for in the City Charter, the Los Angeles Administrative Code or other authorities.

Nonetheless, neighborhood councils should have a basic understanding of the City's contract rules to understand how they should expend their funds and when they should seek assistance from the DONE. The following represents a *brief* summary of selected City Charter ("CC") and Administrative Code ("LAAC") sections regarding competitive bidding and general requirements of City contracts. These rules are very complex and this summary touches upon only the basic components of the City's rules.

## General City Contracting Rules

The City's contracting rules basically apply to any contract over $1000. City contracts over $1,000 must be in writing and must be approved by the City Attorney as to form. *CC* § 370; *LAAC* § 10.2. They must be signed on behalf of the City by the Mayor, board, or the officer/employee *authorized* to enter into the contract, or for contracts authorized by the Council, by the person authorized by the Council. *CC* § 370; *LAAC* § 10.2. As noted above, neighborhood council board members are *not* authorized to execute contracts on their own, and should request assistance of the DONE for any contract that they wish to enter into amounts over $1000. [1]

[1] Expenditures over $1000 for certain types of services could be provided by the use of a "Letter Agreement" or simple invoice. Neighborhood councils should consult with the DONE before utilizing these types of agreements to determine the appropriateness of this vehicle.

## City Not Bound

Compliance with the City's rules is important because the City is not bound by any contract unless it complies with the requirements of the Charter and the City's Administrative Code. *CC* § 370; *LAAC* § 10.2. Thus, the City is not bound by a contract entered into for over $1000 that is not a) in writing, b) signed by the General Manager of the DONE on a neighborhood council's behalf [2] and c) approved as to form by the City Attorney. There are also certain standard contractual provisions that must accompany every City contract, depending upon its length and/or monetary amount.

## Contracts Longer Than Three Years

There are additional rules for lengthy contracts. In addition to the requirements of the contract needing to be in writing, signed, and approved as to form by the City Attorney, City contracts for longer than three years, including renewal options, must also be approved by the City Council. *CC* § 373; *LAAC* § 10.5.

## Competitive Bidding Requirements

Although there are several exceptions, certain types of City contracts are subject to competitive bidding requirements or must be awarded based on competitive proposals. *CC* §§ 371 and 372; *LAAC* §§ 10.15 and 10.17. City contracts subject to competitive bidding requirements are awarded to the lowest responsive and responsible bidder furnishing satisfactory security for performance. *CC* § 371 (a). City contracts subject to competitive proposals are awarded following the review and evaluation of competitive proposals submitted by prospective contractors. Price is not the only factor used in the evaluation of competitive proposals.

## Exceptions to Competitive Bidding Requirements

There are some City contracts that are allowed to be executed without complying with the formal competitive bidding requirements. Many neighborhood council contracts may fall within those categories; however, you should contact your DONE Advocate to determine whether your proposed contract meets these requirements, and satisfies all other City rules before attempting to finalize an agreement with a contracting party. The following categories are the type of contracts that are allowed to be executed without complying with the competitive bidding rules:

*Contract less than $25,000.* City contracts for less than $25,000 or contracts for the purchase of materials, supplies, equipment, or the rental, repair or

[2] However, a board representative of the neighborhood councils may also be a signatory on a contract made on behalf of a neighborhood council, along with the signature of the General Manager of DONE, as is the process for neighborhood council leases.

maintenance of same for an amount not to exceed $100,000. *CC* § 371 (e)(1); *LAAC* § 10.15 (a)(1).

*Professional Expertise.* City contracts for professional, scientific, expert, technical, or other special services of a temporary and occasional character where competitive bidding is not practical or advantageous. *CC* § 371 (e)(2); *LAAC* § 10.15 (a)(2).

*United States Patent.* City contracts for the furnishing of articles covered by a United States patent. *CC* § 371 (e)(3); *LAAC* § 10.15 (a)(3).

*Leasing.* City contracts for leasing (where City is the lessee) or the purchase or real property when approved by majority vote of the City Council. *CC* § 371 (e)(4); *LAAC* § (a)(4). As noted, the City has developed a special program for neighborhood council leases. If your neighborhood council is interested in leasing office space, you should contact your DONE Advocate for assistance. A standard lease has been designed just for neighborhood council office space.

*Urgent Necessity.* City contracts for repairs, alterations, work or improvements declared to be of urgent necessity for the preservation of life, health or property. *CC* § 371 (e)(5); *LAAC* § 10.15 (a)(5).

*Declaration of War.* City contracts entered during declared war or declared federal, state or local emergency where the City Council has suspended the competitive bidding requirements. *CC* § 371 (e)(6); *LAAC* § 10.15 (a)(6).

*Exclusivity.* City contracts for repair or parts obtained from the manufacturer or its exclusive agent. *CC* § 371 (e)(7); *LAAC* § 10.15 (a)(7).

*Cooperative Arrangement.* City contracts for cooperative arrangement with other governmental entities for the utilization of the purchasing or professional service contracts of those agencies. *CC* § 371 (e)(8); *LAAC* § 10.15 (a)(8).

*Competitive Bidding Impractical.* City contracts for services where competitive bidding would be undesirable, impractical or impossible or otherwise permitted by law. *CC* § 371 (e)(10); *LAAC* § 10.15 (a)(10).

**Competitive Bidding/Proposals Preferred.**

Notwithstanding the above exceptions, where competitive bids are not required for a City contract, the City's policy is that competitive proposals or bids shall be obtained as far as reasonably practicable and compatible with the City's interest. *CC* § 372; *LAAC* § 10.17. Other provisions of the City's contracting program require the City to seek Requests for Proposals (also known as "RFP's") before entering into certain agreements.

**Practice Tip:**

Because of the complexities of the City's contracting process, if your neighborhood council is contemplating spending funds in ways other than using the stored value card, you should contact, as early as possible, your DONE Advocate or the DONE Funding Program Director to determine whether a contract needs to be executed and how to comply with the City's contracting rules.

# SECTION VII

## BROWN ACT

California Attorney General's Introduction to the Brown Act
Including New Brown Act Regulation for 2026
Useful Links

# FULL TEXT OF THE BROWN ACT

## § 54950. Declaration, intent; sovereignty

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

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

## § 54951. Local agency

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

## § 54952. Legislative body, definition

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

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

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

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

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

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

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

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

## § 54952.1. Member of a legislative body of a local agency; conduct

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

## § 54952.2. Meeting; prohibited communications; exclusions from chapter

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action

on any item that is within the subject matter jurisdiction of the legislative body.

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

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or mmbers of the legislative body.

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

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

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

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

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

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

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

**§ 54952.3. Simultaneous or serial order meetings of a subsequent legislative body; compensation and stipends**

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

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

**§ 54952.6. Action taken**

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative

decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

**§ 54952.7. Copies of chapter to members of legislative body of local agencies**

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

**§ 54953. Meetings to be open and public; attendance**

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

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

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

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

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

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

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

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

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

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

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

**§ 54953.1. Testimony of members before grand jury**

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

**§ 54953.2. Legislative body meetings to meet protections and prohibitions of the Americans with Disabilities Act**

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

**§ 54953.3. Conditions to attendance**

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

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

**§ 54953.5. Right to record proceedings; conditions; audio or video recordings made by or under direction of local agencies**

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

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

**§ 54953.6. Prohibitions or restrictions on broadcasts of proceedings of legislative body; reasonable findings**

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

**§ 54953.7. Allowance of greater access to meetings than minimal standards in this chapter**

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

**§ 54954. Time and place of regular meetings; special meetings; emergencies**

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

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

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

agency is a party.

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

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

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

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

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

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

(1) Attend a conference on nonadversarial collective bargaining techniques.

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

(3) Interview a potential employee from another district.

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

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

**§ 54954.1. Mailed notice to persons who filed written request; time; duration and renewal of requests; fee**

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

**§ 54954.2. Agenda; posting; action on other matters; posting on Internet Web site**

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

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

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

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

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

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

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

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

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

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

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

**§ 54954.3. Opportunity for public to address legislative body; adoption of regulations; public criticism of policies**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

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

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

**§ 54954.4. Reimbursements to local agencies and school districts for costs**

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

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

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

**§ 54954.5. Closed session item descriptions**

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

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

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION

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

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

or

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

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

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

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

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

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

LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

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

CONFERENCE WITH LABOR NEGOTIATORS

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

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

or

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

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

CASE REVIEW/PLANNING

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

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

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

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

HEARINGS

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

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

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

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

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

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

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

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

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

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

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

**§ 54954.6. New or increased taxes or assessments; public meetings and public hearings; joint notice requirements**

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

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

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

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

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

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

agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

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

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

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

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

(B) The activity to be taxed.

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

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c)(1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, as the case may be.

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

(A) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

**§ 54955. Adjournment; adjourned meetings**

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

**§ 54955.1. Continuance**

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of

continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

**§ 54956. Special meetings; call; notice; meetings regarding local agency executive salaries, salary schedules, or compensation in form of fringe benefits; posting on Internet Web site**

(a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

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

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

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

**§ 54956.5. Emergency meetings in emergency situations**

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b)(1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

**§ 54956.6. Fees**

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

**§ 54956.7. Closed sessions, license applications; rehabilitated criminals**

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

**§ 54956.75. Closed session; response to confidential final draft audit report; public release of report**

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

**§ 54956.8. Real property transactions; closed meeting with negotiator**

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

**§ 54956.81. Investment of pension funds; closed session**

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as

provided in subdivision (a) of Section 54957.2.

**§ 54956.86. Charges or complaints from members of local agency health plans; closed hearings; members' rights**

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

**§ 54956.87. Records of certain health plans; meetings on health plan trade secrets**

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

**§ 54956.9. Pending litigation; closed session; lawyer-client privilege; notice; memorandum**

(a) Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

(b) For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-

session meetings pursuant to this chapter.

(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(1) Litigation, to which the local agency is a party, has been initiated formally.

(2) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).

(4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

(e) For purposes of paragraphs (2) and (3) of subdivision (d), "existing facts and circumstances" shall consist only of one of the following:

(1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(f) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

§ 54956.95. Closed sessions; insurance pooling; tort liability losses; public liability losses; workers' compensation liability

Currentness

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the

joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

**§ 54956.96. Joint powers agency; legislative body; closed session; confidential information**

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

**§ 54957. Closed sessions; personnel matters; exclusion of witnesses**

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b)(1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code.

Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

**§ 54957.1. Closed sessions; public report of action taken**

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be

released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

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

**§ 54957.2. Minute book record of closed sessions; inspection**

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

**§ 54957.5. Agendas and other writings distributed for discussion or consideration at public meetings; writings distributed less than 72 hours prior to meeting; public records; inspection**

(a) Notwithstanding Section 6255 or any other law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

(b)(1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This chapter shall not be construed to prevent the legislative body of a local agency from charging a fee or deposit for a

copy of a public record pursuant to Section 6253, except that a surcharge shall not be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

**§ 54957.6. Closed sessions; salaries, salary schedules or fringe benefits**

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

**§ 54957.7. Disclosure of items to be discussed in closed sessions**

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

**§ 54957.8. Multijurisdictional law enforcement agency; closed sessions by legislative or advisory body of agency**

(a) For purposes of this section, "multijurisdictional law enforcement agency" means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

**§ 54957.9. Disorderly conduct of general public during meeting; clearing of room**

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

**§ 54957.10. Closed sessions; local agency employee application for early withdrawal of funds in deferred compensation plan; financial hardship**

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

**§ 54958. Application of chapter**

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

**§ 54959. Penalty for unlawful meeting**

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

**§ 54960. Actions to stop or prevent violations of meeting provisions; applicability of meeting provisions; validity of rules or actions on recording closed sessions**

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c)(1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the

following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

**§ 54960.1. Unlawful action by legislative body; action for mandamus or injunction; prerequisites**

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c)(1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the

meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

**§ 54960.2. Actions to determine past violations by legislative body; conditions; cease and desist letters; responses by legislative body; unconditional commitments to cease; resolutions to rescind commitments**

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c)(1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To _____:

The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may

be mailed to an address that you have designated in writing.

Very truly yours,

_____

[Chairperson or acting chairperson of the legislative body]

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

**§ 54960.5. Costs and attorney fees**

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

**§ 54961. Meetings prohibited in facilities; grounds; identity of victims of tortious sexual conduct or child abuse**

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

**§ 54962. Closed session by legislative body prohibited**

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

**§ 54963. Confidential information acquired during an authorized closed legislative session; authorization by legislative body; remedies for violation; exceptions**

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grandjury.[1]

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.