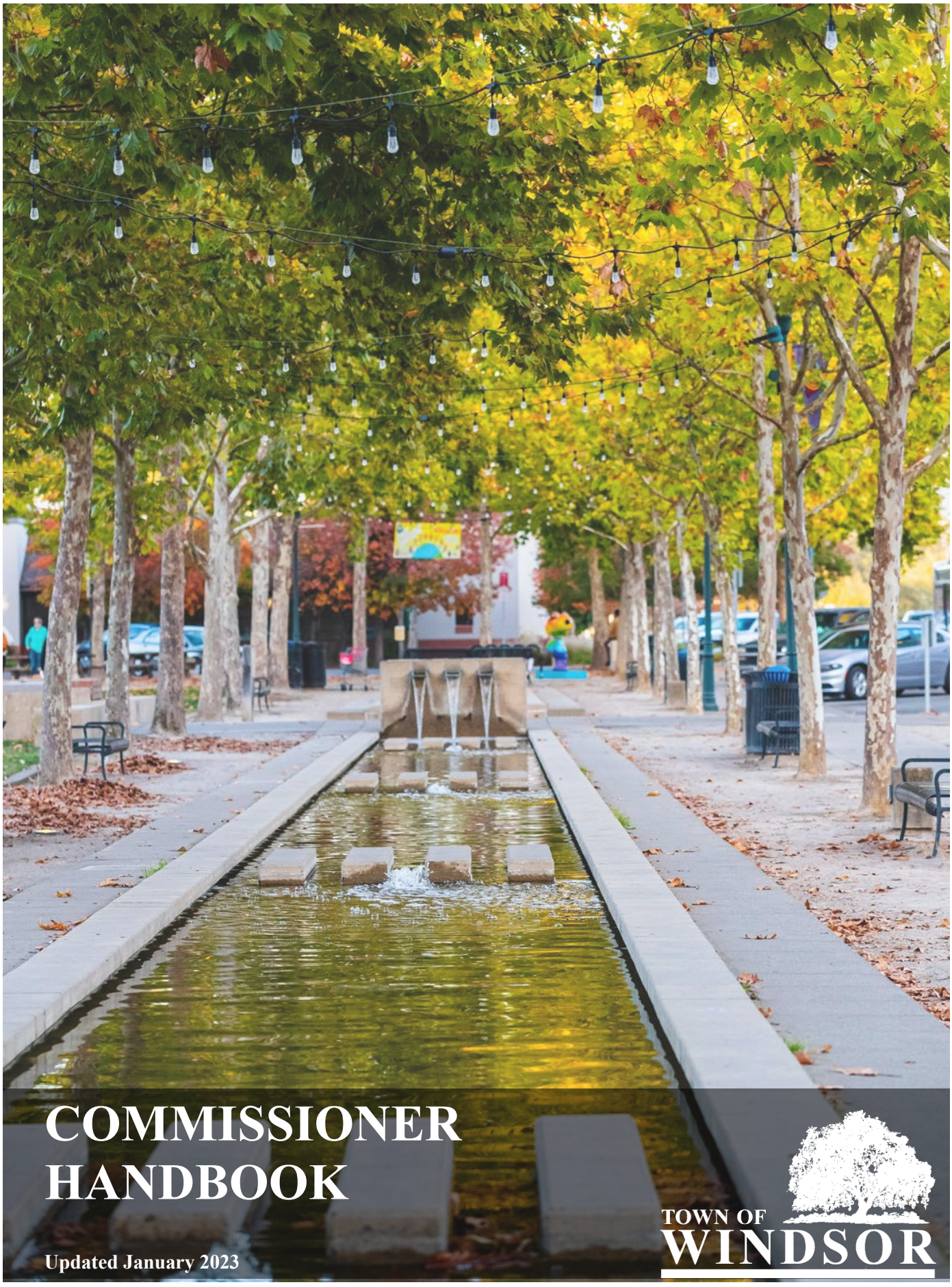


# COMMISSIONER HANDBOOK

Updated January 2023

TOWN OF WINDSOR

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# INTRODUCTION

Thank you for contributing to your community by serving on a Commission or Committee. The Town Council appreciates your willingness to work in this capacity and hopes your experience will be inspiring, enjoyable, and satisfying. Individuals who serve in this capacity are considered public officials. As such there are basic laws and procedures you must comply with as you serve out your term.

The purpose of this handbook is to provide you with a guide for the basic protocols that apply generally to all advisory bodies. Commissioners and committee members are to conduct meetings in accordance with Town laws and policies; to inform members of their responsibilities and duties; relationships between members and the Town Council, Town Manager, Town staff, and the general public. In assuming your role on a Commission or Committee you are making a commitment to actively participate in the local government process and act in the best interest of the Town. This role is one of great responsibility and integrity in which you must always represent your Commission or Committee and the Town in a respectful and ethical manner.

# TOWN GOVERNMENT

The Town of Windsor is a general law city operating under a Council-Town Manager form of government. The Town Council consists of five (5) members. The Mayor is elected by the voters at-large and serves a two-year term of office. The remaining four members of the Town Council are elected by voters within their respective districts to serve a four-year term of office. The Mayor and the Town Council are the governing body of the Town and are vested with all the regulatory and corporate power for the Municipal Corporation. The Town Council approves ordinances, and resolutions, reviews proposals for community needs, initiates actions for new programs and determines the ability to provide financing. Since Town Councilmembers are elected directly by the electorate, they are accountable to the people for their actions.

With the exception of the Planning Commission, all members serving on a Commission or Committee serve in an advisory capacity to the Mayor and the Town Council. Commissioners are not Town employees. Relatives within the third degree or closer (i.e., children, parents, brothers and sisters, grandparents and grandchildren, aunts and uncles, nieces, and nephews) whether by blood, adoption, or marriage may not serve on the same board or commission, unless an exception is approved by the Town Council on a case-by-case basis. It is the responsibility of members to offer recommendations, not to set or establish either Town policy or administrative direction.

**The Town Manager is responsible to the Mayor and the Town Council for the administration of all affairs of the Town. The Mayor and Town Council appoint the Town Manager who directs most Town Departments. Department heads are responsible to the Town Manager for the efficient and effective operations of the functions assigned to them and to provide staff assistance, as needed, to the commissions. However, commissions have no authority to supervise or direct the work of any department.**

**WINDSOR WATER DISTRICT**

The Windsor Water District is a subsidiary district of the Town of Windsor and a separate legal entity and includes some adjacent parts of unincorporated Sonoma County. The council acts as the Board of Directors of the District, while the Town Manager acts as the District Manager.

**REDEVELOPMENT SUCCESSOR AGENCY**
The Redevelopment Successor Agency is an entity legally separate from the Town of Windsor; however, the Town Council is the Board of Directors of the Redevelopment Successor Agency, and the Town Manager is its Executive Director. The Redevelopment Successor Agency is charged with implementing the dissolution of redevelopment.

**PLANNING COMMISSION**
Pursuant to Government Code Sections 65100 et seq., the Town Council adopted Ordinance No. 92-07 establishing a five-member Planning Commission. Each Councilmember makes their Commission appointment recommendation to the Mayor. Appointments will be made by the Mayor, reflecting the recommendations of Council, ratified, and approved by Council pursuant to Government Code Section 40605.)

The Planning Commission generally acts on land use matters such as the General Plan, specific plans, rezonings, use permits and subdivisions.

**CITIZEN ADVISORY COMMISSIONS AND COMMITTEES**
"Citizen Advisory Committee" is a generic title for groups appointed by the Council to provide advice on policy matters to the Town Council. The term includes Boards, Commissions, Advisory Councils, Advisory Committees, and Task Forces, etc.

There are two types of advisory commissions and committees: Standing and ad hoc. Standing Commissions/Committees are on- going and ad hoc committees meet on an as-needed basis. Windsor's Standing Commissions/Committees consist of the following:

- Parks and Recreation Commission
- Public Art Advisory Commission
- Senior Citizen Advisory Commission

The responsibilities of the advisory commissions/committees are:

- To advise the Town Council on matters within their area of responsibility and interest as prescribed by the Town Council and Town ordinances, through their respective commissions.
- Help focus attention on specific issues and problems within their scope of responsibilities and recommend actions and alternatives for their resolution, through their respective commissions.
- Act as channels of communication and information between Town government and the general public.
- Reconcile contradictory viewpoints and provide direction toward achieving town-wide goals and objectives.
- Encourage broad citizen participation in the definition and formulation of Town goals and actions for achieving those goals.
- Balance community needs with municipal responsibilities and resources.

# POLICIES AND PROCEDURES

**Application Process**
Any person interested in serving on a commission or committee is invited to complete an application form and submit it to the Town Clerk's Office when vacancies occur. Anytime there is a vacancy, due to resignation, removal, or term expiration, a notice may be published in the local adjudicated newspaper, advertised on the Town's website, social media pages, electronic sign, and Town posting boards. Applications are available in the Town Clerk's Office and may also be downloaded or submitted electronically from the Town's website. Members are appointed by the Town Council.

**Qualifications**
In order to serve on a Commission or Committee, an applicant must be 18 years of age or older at the time the application is submitted to the Town Clerk's Office, and reside within the Town of Windsor Town limits, unless otherwise stated in the Commission/Committee By-laws. Applicants applying for student representative seats are an exception to the requirements above. Student representatives must be in grades 11 or 12 during their appointed term, typically June – May.

**Oath of Office**
Before a commission or committee member may participate as voting members of their bodies, they must take the Oath of Office with the Town Clerk or a deputized staff member. This can be done at any time, during normal office hours, or as part of a commission meeting following the commissioner's formal appointment by Council.

**Term of Office**
The Terms of office will run concurrent with the nominating Councilmember or as indicated on the commission or committee roster. Members remain seated until their term expires or until a new appointment is made by the Town Council.

**Scope of Authority**
Advisory bodies may formulate recommendations and function as a forum for discussion of various issues and should function as a group. The advisory role includes expressing views on programs and policies within the authorized scope of interest. Advisory groups will also focus on issues for the Town Council by identifying pros, cons, and possible actions.

Advisory bodies are not involved in administration or operation of Town departments, including legal counsel. They may not direct staff to initiate programs and may not conduct major studies or establish policy. Advisory bodies also may not determine departmental work programs or staff priorities. They may not take unilateral action as an official representative. At no time shall Commissioners engage in conduct that substantially and unreasonably interferes with the ability of any other Commissioner or Town employee to perform their official duties, violates any Town policies or that creates an intimidating or hostile work environment.

**Attendance**
Attendance is critical for commission/committee bodies to function as intended. Members should arrive prior to the meeting start time to ensure meetings begin on time and to respect the staff and public's time.

If any member misses two meetings (exception Planning Commission who can miss three meetings) in a row without notice or cause, the member's position will be vacated in order to be filled with someone who is able to attend the meetings for that term. Just
cause for absences includes illness, family emergency, or schedule conflicts directly related

to the business and interest of the Town. Also, a member who misses three meetings in one year will be referred to the Mayor for further review and determination of cause. Three unexcused absence is grounds for dismissal.

## LEAVING OFFICE

Removal of Members

Any member of a commission or committee appointed by the Town Council may be removed from office at any time, with or without cause.

Resignation

Commissioners resigning from office before the end of their term must submit a letter of correspondence announcing their resignation directly to the Town Clerk and Commission Secretary. Copies will be forwarded to the Town Council, staff liaison, and the Commission.

## OFFICERS

Each year the commission or committee shall elect a Chair and Vice Chair, typically the first meeting (regular or special) of the new year. The Chair and Vice Chair are selected by the majority of the commission for a one-year term and shall hold this position until a successor is appointed or until their terms as members of the commission expire. Nominating members for Chair/Vice Chair Commissions is done by formal motions to appoint specific individuals followed by a second and then a vote. Members do not have to be present to be elected Chair/Vice Chair. However, the motion must be made by a member present at the meeting where the action is taking place and approved by the Commission majority present at the meeting.

Members may serve consecutive years. If an officer resigns or is removed before the expired term, a successor shall be selected by the commission at a special or regular meeting. A successor shall act as Chair/Vice Chair for the unexpired term remaining. The Town Manager or their designee shall serve as secretary to the commission. The Secretary shall prepare minutes for the commission's approval and record keeping.

## QUORUM AND VOTING

With the exception of the Senior Citizen Advisory Commission, a quorum shall consist of a majority of the full membership of the commission. ("Full membership" includes all seats whether filled or vacant.) A quorum shall be present in order to transact business.

A quorum for the Senior Citizen Advisory Commission shall consist of the majority of the occupied seats.

An action or choice is deemed approved by a majority of commissioners who are present and voting. (An abstention is not a vote.)

If a commissioner is disqualified from voting because of a conflict of interest, that commissioner shall not be counted for purposes of establishing a quorum for the particular questions or agenda item giving rise to the conflict.

In the event that a majority of commissioners will not be present to conduct a meeting, the staff liaison shall announce the lack of a quorum and publicly post the meeting cancellation notice.

### Meeting Types

Town Commission/Committee bodies may hold two types of meetings: regular and special meetings. The staff liaison to the meeting body is responsible for noticing the advisory members and the

Town Clerk's office of meeting cancellations, adjournments, and/or change of locations.

The Brown Act requires advisory bodies to conduct public meetings. Therefore, both regular and special meetings should be conducted with doors to the room open in order to facilitate public involvement. The public should have the opportunity to speak at the meetings by being called upon.

**Regular Meetings**
Regular meetings are held at the time and place as determined by the majority vote of the legislative body.

**Special Meetings**
Special meetings may be held at a different time or place to discuss specific issues as noted on the meeting agenda, as long as the meeting has been properly noticed. Commission/committee majority is required to schedule and hold a special meeting.

## AGENDAS

Electronic agendas for all commission or committee meetings will be prepared in advance of the meeting. These agendas must be noticed and available to the public and commission 72 hours before a regular meeting. For special meetings, the advance notice requirement is 24 hours.

As a public service to the community, meetings are televised on Comcast and Cable Channel 27, on AT&T U-verse Channel 99 and via live webcast at http://townofwindsor.com/721/Agendas- Minutes-Videos on the day of the meeting. When available, teleconference participation for the public will be made available using Zoom. All meeting information, including how to participate in or view a meeting, is listed on the agenda.

**Posting Agendas:**

- Town Hall, 9291 Old Redwood Highway, Windsor, CA 95492
- Safeway (Lakewood Shopping Center), 9080 Brooks Road South, Windsor, CA 95492
- Windsor Library, 9291 Old Redwood Highway, Bldg. 100, Windsor, CA 95492

Agendas and meeting materials are available on the Town's website at www.townofwindsor.com.

**Agenda Packets:**
As part of the Town's climate and environmental goals, agenda packets are distributed to all members in electronic format, detailing the items of business to be discussed and any communications to be presented will be prepared in accordance with the Brown Act and provided to the commissioners within a reasonable amount of time before the meeting. Although an agenda is provided for each meeting, the degree of background material will vary. In order to be prepared for meetings, commissioners are to read these packets when they are distributed electronically and contact the chairperson or the staff liaison if there are any questions regarding information presented in the staff report(s).

**Action Minutes**
Commission/Committee Secretaries shall prepare action minutes which only document the action taken at its meetings.

**Meetings Times**
Meetings shall be held at Town Hall unless otherwise noticed. Planning Commission, Parks and

Recreation Commission, Public Art Advisory Commission, and Senior Citizen Advisory Commission shall meet on a regular basis, with a standard starting time. If a regular meeting falls on a holiday, the commission may reschedule the meeting to another date. Appropriate public notice is required for changes in meeting times and locations. If there are no items of business on the agenda, it is not necessary to convene.

# COMPOSITION OF DUTIES & RULES APPLICABLE TO PLANNING COMMISSION, AND INDIVIDUAL ADVISORY COMMISSIONS

Below is a brief description of current Town Commissions. For full descriptions, including by-laws please refer to their respective adopted resolutions or ordinance (attached as exhibits to this Handbook).

## PLANNING COMMISSION

**Composition**
Per the Town's Ordinance No. 92-07, the Planning Commission shall consist of five members.

The Planning Commission meets on the second and fourth Tuesdays of the month at 5:30 p.m., in the Windsor Civic Center, Council Chambers, 9291 Old Redwood Highway, Building 400, Windsor, CA.

Special meeting dates and times may be modified by a simple majority vote of the commission or commissioners.

**Appointment and Term**
Each Councilmember shall recommend the appointment of one applicant to the commission for a term coinciding with the term on the Council. Terms shall begin on the date of the first meeting of the Commission after appointment and when the new Commissioner takes the Oath of Office, administered by the Town Clerk or their designee. If a vacancy occurs other than by expiration of term, it shall be filled by appointment. The Councilmember whose previous recommended appointee has caused the vacancy to occur will make the new recommendation to the Mayor for formal appointment and ratification by the Council. All vacancies shall be advertised for a minimum two-week period to solicit applications.

**Roles and Responsibilities**
The Planning Commission generally acts on land use matters such as the General Plan, specific plans, rezonings, use permits, and subdivisions.

The Planning Commission has final authority on land use entitlements unless appealed to the Town Council within 10 calendar days. The Planning Commission is a recommending body for legislation acts such as General Plan Amendments and Zone changes.

**Removal from Office**
Although a member shall be appointed for a term, they may be removed at the sole discretion of the Councilmember who made the recommended appointment. A member who fails, without permission, to attend three successive meetings of the Commission is subject to removal. The seat vacated by the removal of a member shall be filled by appointment by the Councilmember who appointed the member removed.

## PARKS AND RECREATION COMMISSION

**Composition**
The Parks and Recreation Commission is composed of five adult members and two youth members with a Junior (11th Grade) or Senior (12th Grade) status at Windsor High School. The Parks and Recreation Commission meet on the second Wednesday of each month at 6:00 p.m. in the Windsor Civic Center, Council Chambers, 9291 Old Redwood Highway, Building 400, Windsor, CA.

Meeting dates and times may be modified by a simple majority vote of the commission.

**Appointment and Term**
Adult Members: Each Councilmember appoints one applicant to the Commission. The Commissioner's term of office is concurrent with the appointing Councilmember's term. The term of appointment shall be four years. If there are vacancies prior to the completion of a term, the Councilmember who appointed the individual to the Commission shall appoint another applicant to replace their prior appointee.

Youth Members: Each member must be in good academic standing, maintaining at least a 2.5 GPA (C average) and serve on the Commission for a term of one year commencing in May.

Seat 1: Environmental Studies Core student in the Windsor Institute for Sustainability and the Environment (WISE) Academy - Parks and Recreation Commissioner
   a. Submit an application and cover letter to the assigned WISE Academy teacher advisor in charge of this focus area.
   b. Upon faculty approval, one eligible WISE Academy student shall be elected by WISE Academy students.

Seat 2: Student Council - Parks and Recreation Commissioner
   a. Submit a completed "petition to run for office" through the student government elections process at Windsor High School.
   b. Complete a Teacher Recommendation form to qualify for student body elections.
   c. One eligible student shall be elected by the student body.

Both seats will be appointed by Council majority vote at their first meeting of May each year. The youth commissioners will hold a non-voting status, serving in an "input only" capacity.

**Roles and Responsibilities**
To be available to the Town Council to research and recommend policy alternatives pertaining to the Town's Parks and Recreation policies; and to be available to staff to assist as volunteers in implementing the Town's Parks and Recreation Department budget goals.

**Removal of Members**
Adult Members: Although a member shall be appointed for a term, they may be removed at the sole discretion of the Councilmember who made the recommended appointment. A member who fails without permission, to attend two successive meetings of the Commission is subject to removal. The seat vacated by the removal of a member shall be filled by appointment at the recommendation of the Councilmember who recommended the appointment of the commissioner removed. Vacancies will be advertised by the Town Clerk’s Office.

Youth Members: Although a member shall be appointed for a term, he or she may be recommended for removal at the discretion of the Town Council. A member who fails without permission, to attend two successive meetings of the Commission is subject to removal. Removal is subject to majority vote of the

Council. The seat vacated by the removal of a member shall be filled by a Windsor High School teacher advisor.

## PUBLIC ART ADVISORY COMMISSION

**Composition**
The Public Art Advisory Commission is composed of seven members. The Public Art Advisory Commission meets the second Monday of the month at 11:00 a.m., in the Windsor Civic Center, Council Chambers, 9291 Old Redwood Highway, Building 400, Windsor, CA.

**Appointment and Term**
Five (5) members at large: Each Councilmember shall appoint one (1) applicant to the Commission. The Commission member's term of office shall be concurrent with the appointing Councilmember's term. If there are vacancies prior to the completion of a term, the Councilmember who appointed the individual to the Commission shall appoint another applicant to replace his/her prior appointee.

One (1) member at-large by simple majority vote: The Town Council shall appoint a current representative from Town Council to serve a four-year term. If there is a vacancy prior to the completion of a term, the Town Council shall appoint another Councilmember to replace the prior Councilmember.

One (1) member at-large by simple majority vote: Parks and Recreation Commission shall recommend, and Council shall appoint a current representative from the Parks and Recreation Commission to serve a four-year term. If there is a vacancy prior to the completion of a term, the Parks and Recreation Commission shall recommend another Parks and Recreation Commissioner to Council for formal appointment to replace the prior Commissioner.

Two (2) youth members with a Junior (11$^{th}$ Grade) or Senior (12$^{th}$ Grade) status. Youth seats will be appointed by Council majority vote and will hold a non-voting status with an “input only” capacity. Youth members service on the Commission will be for a one-year term commencing in June.

**Roles and Responsibilities**
To be available to the Town Council to research and recommend policy alternatives pertaining to the Town's Public Art policies; and, to be available to staff to assist as volunteers in implementing the Town's Public Art goals, including:

- Review and forward recommendations regarding all works of art acquired by or loaned to the Town, either by purchase, gift, or otherwise, including but not limited to works of art installed in or on all Town-owned buildings that are visible to the public.

- Recommend to the Town Council on all matters pertaining to the quality, quantity, scope, and style of art and culture in public places in the Town of Windsor.

- Provide recognition and increased opportunities for artists through art in public places projects and maintain an inventory of meritorious works of art in the public view.

- Forward recommendations to the Town Council regarding Public Art funds in accordance with established criteria.

- In cooperation with Town staff, forward recommendations to the Town Council with respect to priorities for expenditures, revenue, grants and cost recovery targets and serve as advocates for

arts and culture and alternate sources of arts and culture funding, including but not limited to grants, donations and corporate sponsorships.

- Advise the Town Council and Town staff on policies, procedures, rules and regulations relating to the selection, installation, implementation, enhancement, on- going maintenance and management of public art in Windsor.

- Advise on art programs, services and special events administered by the Parks and Recreation Department to meet the needs of the community and recommend review by the Town Council as needed.

- Assist in collecting and disseminating information on the art projects and programs available to Windsor residents and promote greater public participation in and access to the arts.

- Engage, advise and guide civic groups, youth organizations and interested individuals who wish to plan community events in the arts or engage in artistic-based community service projects for the benefit of the Town and the community, as staff resources and time permits.

- Assist and advise the Town Council and Town staff in the update, administration and implementation of the Parks and Recreation Master Plan, the General Plan and other studies as appropriate.

- Provide a forum for residents to express their views related to public art and other related issues. Promote interest, cooperation, problem solving and support among public, private and non-profit organizations.

- Assist in assessing present and future needs of the Town with respect to public art and culture as needed or as requested.

- Be available to the Town Council and Town staff to assist as volunteers in implementing the Parks and Recreation Department and Town-wide goals.

- The Town Council or Town staff may assign other responsibilities or special projects to the Public Art Advisory Commission.

**Removal of Members**
Although a member shall be appointed for a specific term, they may be removed at the sole discretion of the applicable appointing authority (i.e., the Councilmember, the Town Council, or the Parks and Recreation Commission). A member who fails without permission of the Chair, to attend two (2) successive meetings of the Commission is subject to removal. The seat vacated by the removal of a member shall be filled by appointment by the applicable appointing authority.

## SENIOR CITIZEN ADVISORY COMMISSION

Note: The Senior Citizen Advisory Commission is subject to the provisions of an agreement dated June 1, 1994 between The Town of Windsor and Brooks Creek Associates; the provisions of this resolution are intended to be consistent with that agreement.

**Composition**
Per the Agreement and Covenants, Conditions & Restrictions (CC&R' s), the Senior Citizen Advisory Commission is composed of eleven (11) members. The Senior Citizen Advisory Commission meets quarterly on the fourth Tuesday of the months of January, April, July and October at 2:00 p.m., in the Windsor Civic Center, Council Chambers, 9291 Old Redwood Highway, Building 400, Windsor, CA.

Meeting dates and times may be modified by a simple majority vote of the commission.

**Appointment and Term**
Five (5) members at-large: Each Councilmember shall recommend the appointment of one applicant to the commission for a term coinciding with the term on the Council. Terms shall begin on the date of the first meeting of the Commission after appointment and when the new Commissioner takes the Oath of Office, administered by the Town Clerk or their designee. If a vacancy occurs other than by expiration of term, it shall be filled by appointment. The Councilmember whose previous recommended appointee has caused the vacancy to occur will make the new recommendation to the Mayor for formal appointment and ratification by the Council. All vacancies shall be advertised for a minimum two-week period to solicit applications.

Two (2) residents from the Alden Woods and California Creekside subdivisions: by a simple majority vote, Town Council shall appoint Commission members to serve four-year terms, the appointment of which shall be staggered by two years.

One (1) member at-large: by a simple majority vote, Town Council shall appoint a Commission member to serve a four-year term.

Up to three (3) residents from the Brooks Creek subdivision: by a simple majority vote Town Council shall appoint Commission members to serve a four-year, staggered term. Representation may be reduced or eliminated if the obligations of the imposed assessment of $200 per lot in the Brooks Creek subdivision go below the following percentages of the total cost to operate the Senior Center and Pool:

| Percentage of Cost | Representation |
|---|---|
| 30% | 2 |
| 20% | 1 |
| 10% | 0 |

If the number of representatives from Brooks Creek subdivision is less than three (3), based on the formula above, Town Council may "back fill" the reduced number of Brooks Creek representatives with "at-large" appointments by a simple majority vote, to serve a four-year, staggered term(s).

All Committee members must be residents of the Town of Windsor.

The Senior Citizen Advisory Commission shall be comprised of Senior Citizens, defined in the Agreement and CC&R's as a person age 55 or older, and their guests, their spouses, their co- habitants, or persons age 45 or older who are providing primary physical or economic support for such persons.

**Roles and Responsibilities**
The Senior Citizen Advisory Commission shall have the duty of serving in an advisory capacity to the Town Council to support the recreation programs and services offered to senior citizens and persons with disabilities.

**Removal of Office**
Five (5) members at-large: although a member shall be appointed for a term, they may be removed at the sole discretion of the Councilmember who made the appointment for any reason or for no reason. A member who fails without permission, to attend two (2) successive meetings of the Commission is subject to removal. The seat vacated by the removal of a member shall be filled by appointment by the Councilmember who appointed the member removed.

All other representatives: although a member shall be appointed for a term, he or she may be removed from the Commission for any reason or no reason at the discretion of the Town Council. A member who fails without permission, to attend two (2) successive meetings of the Commission is subject to removal. Removal is subject to a simple majority vote of the Council. The seat vacated by the removal of a member shall be filled by Town Council by a simple majority vote.

# PARLIAMENTARY PROCEDURES

The Town Council has set forth the following rules that are to be applicable to meetings of the Town Council, Planning Commission and Advisory Commissions.

## RULES OF CONDUCT

Business shall be brought before the Commission by motion in accordance with the following Town Council rules of conduct.

**OBTAINING THE FLOOR.** Any Commissioner wishing to speak must first obtain the floor by being recognized by the Chair. The Chair must recognize any Commissioner who seeks the floor when appropriately entitled to do so.

**MOTIONS.** The Chair or any Commissioner may bring a matter of business before the Commission by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Chair shall open the matter for debate offering the first opportunity to debate to the moving party and, thereafter, to any Commissioner properly recognized by the Chair. Once the matter has been fully debated and the Chair calls for a vote, no further debate will be allowed, provided however, any Commissioner may be allowed to explain their vote.

**VOTING.** All Commissioners present at a meeting when a question comes up for a vote, shall vote for or against the measure unless they is disqualified from voting and abstains because of such disqualification. If the vote is a voice vote, the Chair shall declare the result and note for the record all "aye" votes and all "no" votes. The Commission may also vote by roll call vote, ballot or voting machine. Regardless of the manner of voting, the results reflecting all "ayes" and "noes" must be clearly set forth for the record.

In the case of a tie in votes on any proposal, the proposal is considered lost. In such an instance, any member of the Commission may offer a motion for further action. If there is no action by an affirmative vote, the result is no action. If the matter involves an appeal, and an affirmative vote does not occur, the result is that the decision appealed stands as decided by the decision-making person or body from which the appeal was taken.

**CONFLICTS.** A member of the Commission who has a conflict of interest regarding any matter being

considered by the Commission shall declare the conflict, state the reason for the conflict, and leave the room during the discussion of that particular agenda item, unless it is a Consent Calendar item.

**PROCEDURAL RULES OF ORDER.** Once the main motion is properly placed on the floor, several related motions may be employed in addressing the main motion. These motions take precedence over the main motion, and if properly made and seconded, must be disposed of before the main motion can be acted upon. The following motions are appropriate and may be made by the Chair or any Commissioner at any appropriate time during the discussion of the main motion. They are listed in order of precedence. The first three subsidiary motions are nondebatable; the last four are debatable:

# SUBSIDIARY MOTIONS

1. Lay on the Table. Any Commissioner may move to lay the matter under discussion on the table. This motion temporarily suspends any further discussion of the pending motion without setting a time certain to resume debate. It must be moved and seconded and passed by a majority vote. In order to bring the matter back before the Commission, a commissioner must move that the matter be taken from the table, seconded and passed by a majority. A motion to take from the table must be made at the same meeting at which it was placed on the table or at the next regular meeting of the Commission. Otherwise, the motion that was tabled dies, although it can be raised later as a new motion.

2. Move Previous Question. Any Commissioner may move to immediately bring the question being debated by the Commission to a vote, suspending any further debate. The motion must be made and seconded without interrupting the one who already has the floor. A two-thirds vote is required for passage.

3. Limit or Extend Limits of Debate. Any Commissioner may move to put limits on the length of debate. The motion must be made and seconded and requires a two-thirds vote of the Commission to pass.

4. Postpone to a Time Certain. Any Commissioner may move to postpone the pending question to a time certain. This motion continues the pending main motion to a future date as determined by the Commission at the time the motion is passed. The motion must be seconded and requires a majority vote for passage.

5. Commit or Refer. Any Commissioner may move that the matter being discussed should be referred to a commission for their study. The motion must be seconded and requires a majority vote for passage. The motion may contain directions for the commission, as well as a date upon which the matter will be returned to the Commission's agenda. If no date is set for returning the item to the Commission agenda, any Commissioner may move, at any time, to require the item be returned to the agenda. The motion must be seconded and a majority vote is required for passage if the item is to come back at a future date certain, or a two-thirds vote if the item is to be immediately discussed by the Commission at the time the motion to return is made.

6. Amend. Any Commissioner may amend the main motion or any amendment made to the main motion. Before the main motion may be acted upon, all amendments and amendments to amendments must first be acted upon. A motion to amend must be seconded, and requires a majority vote for passage. An amendment must be related to the main motion or amendment to which it is directed. Any amendment which substitutes a new motion rather than amending the existing motion is out of order and may be so declared by the Chair.

7. Postpone Indefinitely. Any Commissioner may move to postpone indefinitely the motion on the floor, thus avoiding a direct vote on the pending motion and suspending any further action on the matter. The motion must be seconded and requires a majority vote for passage.

## MOTIONS OF PRIVILEGE, ORDER AND CONVENIENCE

The following actions by the Commission are to ensure orderly conduct of meetings and are for the convenience of the Chair and Commission. These motions take precedence over any pending main or subsidiary motion and may or may not be debated as noted.

1. Call for Orders of the Day. Any Commissioner may demand that the agenda be followed in the order stated therein. No second is required, and the Chair must comply unless the Commission, by a two-thirds vote, sets aside the orders of the day.

2. Question of Privilege. Any Commissioner, at any time during the meeting, may make a request of the Chair to accommodate the needs of the Commission or the Chair. Admissibility of question is ruled on by the Chair.
3. Recess. Any Commissioner may move for a recess. The motion must be seconded, and a majority vote is required for passage. The motion is debatable.

4. Adjourn. Any Commissioner may move to adjourn at any time, even if there is business pending. The motion must be seconded, and a majority vote is required for passage. The motion is not debatable.

5. Point of Order. Any Commissioner may require the Chair to enforce the rules of the Commission by raising a point of order. The point of order shall be ruled upon by the Chair.

6. Appeal. Should any Councilmember be dissatisfied with a ruling from the Chair, they may move to appeal the ruling to the full Council. The motion must be seconded to put it before the Council. A majority vote in the negative or a tie vote sustains the ruling of the Chair. The motion is debatable, and the Chair may participate in the debate.

7. Suspend the Rules. Any Commissioner may move to suspend the rules if necessary to accomplish a matter that would otherwise violate the rules. The motion requires a second, and a two-thirds vote is required for passage.

8. Division of Question. Any Commissioner may move to divide the subject matter of a motion which is made up of several parts in order to vote separately on each part. The motion requires a second and a majority vote for passage. This motion may also be applied to complex ordinances or resolutions.

9. Reconsider. Except for votes regarding matters which are quasi-judicial in nature or matters which require a noticed public hearing, any member of the Commission with the prevailing may move for a reconsideration of that action at the same or next succeeding meeting to correct inadvertent errors or to consider new information not available at the time of the vote. The motion must be seconded and requires a majority vote for passage, regardless of the vote required to adopt the motion being reconsidered. If the motion to reconsider is successful, the matter to be reconsidered takes no special precedence over

other pending matters, any special voting requirements related thereto still apply, and the actual reconsideration of the question shall be heard at the next regularly scheduled meeting. After the actual reconsideration of the question has been acted upon, no other motion for reconsideration thereof will be made without unanimous consent of the members present. In the case of a tie vote, the prevailing side of the Commission will be deemed to be those commissioners who voted in the negative.

10. Rescind, Repeal or Annul. The Commission may rescind, repeal, or annul any prior action taken with reference to any legislative matter so long as the action to rescind, repeal or annul complies with all the rules applicable to the initial adoption, including any special voting or notice requirements or unless otherwise specified by law.

**AUTHORITY OF THE CHAIR.** Subject to appeal, the Chair shall have the authority to prevent the misuse of the legitimate form of motions, or the abuse of privilege of renewing certain motions, to obstruct the business of the Commission by ruling such motions out of order. In so ruling, the Chair shall be courteous and fair and should presume that the moving party is making the motion in good faith.

# COMMISSION RESPONSIBILITIES

**PROVIDING POLICY ADVICE TO THE TOWN COUNCIL**
The primary role of the commission is to provide advice on policy to the Council. To understand the context of this role and responsibility, it is necessary to understand the responsibilities of the other major structural components of the Town's organization: Council and staff, as well as the limitations of your individual authority. As a member of an advisory body, you will be asked to provide recommendations to staff, the Town Manager, or the Town Council about specific issues through your body as a whole. Keep in mind that your appointment does not empower you to supervise or direct Town staff.

Council has the sole responsibility for setting Town Policy. The reason it alone has this responsibility is because it is the only group of people elected by a vote of the people. Council sets a variety of types of policies. Assistance with these policies is what is relevant to advisory commissions. Policies are those that describe the vision the community has set for itself. Policies are those that identify (1) what services/regulations the Town should provide, (2) for which people and (3) at what cost.

To aid this process, regular communication between Councilmembers and Commissioners is encouraged provided that such communication is in accordance with the Brown Act.

The advisory commission is in a support role to the Town Council. The Town Council sets the agenda of what policies it wants the Town organization to address and then refers to the advisory commissions those policy issues on which it needs research and analysis assistance.

**REPRESENT THE BOARD OR COMMITTEE**
Individual "opinions" to the public and press, if given, should be identified as such. Be careful to represent the majority views of your individual board or committee. This includes participation in any Town, District, County, State, Federal, or other political activity or in any nomination, campaign, or election. Members are expected to maintain decorum at Town offices, they are also expected to act with decorum on social media. Members must not use social media as a platform to treat members of the public, one another, other Town officials, or staff without respect.

**Represent the Public Interest**
Members should represent the public interest and not special interest groups.

**Serve as a Liaison**
Members are in a unique position of serving as a liaison between the Town and its citizens and can help to reconcile contradictory viewpoints and to build a consensus around common goals and objectives. Members serve as a communication link between the community, staff, and Town, presenting Town programs and recommendations and providing a channel for community expression.

**Prepare in Advance of Meetings**
Do your homework and be thorough in recommendations by reviewing items prior to the meeting in order to be fully prepared to discuss, evaluate, and act on all matters scheduled for consideration. If you are unsure about something before or during the meeting, ask for clarification from your staff liaison to ensure your decisions are based on the facts presented. On behalf of the public, your understanding of issues is important.

**Cultivate Relationships**
Supportive relationships with the Town Council and Town staff are essential for successful operation of any board or committee. The proper channel to contact Town personnel on items of consideration is through the designated Town staff liaison providing staff support for your group.

Establish a good working relationship with fellow members of your board, commission, or committee. Respect individual viewpoints, allow other members time to present their views fully before making comments, be open and honest, welcome new members, and strive to minimize political action on issues.

**Keep an Open Mind**
An objective, balanced, and receptive approach will help you assess the facets of a given issue and evaluate new ideas. When receiving written and oral public testimony it will be necessary to discern between fact and opinion, as well as between those concerns which are relevant and those which are secondary to the issue at hand. Keeping an open mind will make it easier for you to understand all sides of an issue before you make a judgment or take a position.

Strive to appreciate differences in approach and point of view. Diversity of ideas sustains a thoughtful dialogue and a vibrant community. Likewise, take care to articulate your own ideas: remember that your individual voice is a critical part of the whole dialogue. Again, furthering common goals takes cooperation, flexibility, and a broad-based view of the public interest.

**Code of Ethics**
The Town's Code of Ethics policy recognizes that maintenance of high ethical and moral standards in public business is the basis for effective government. Since public confidence is endangered when ethical standards falter, all public employees and officials must act with unwavering integrity, absolute impartiality, and devotion to public interest. All members of a Town Committee or Commission should avoid the appearance of bias in matters pending before the member’s Committee or Commission at all times. Any member who becomes biased may violate the public and applicant’s constitutional right to due process and a fair and impartial hearing.

Once the Council has adopted a policy and the staff has the responsibility for implementation, there is still a responsibility for the commission: being available to assist staff in implementing policies. This is the second responsibility of a commission.

**COMMISSION EXPENSES**
The Town Council establishes a Town Budget every year, which is effective July 1. Town staff is responsible for administering the budget. The budget includes appropriations (authority to expend up to a

designated amount of money) for each of the Town's departments. The appropriation includes some funding to cover miscellaneous advisory commission expenses.

Incurring Town expenses should occur in the manner described for a typical commission expense: providing training for commission members. When training opportunities arise through workshops or conferences, etc., it is critical the commissioner planning to attend receive in advance (1) commission authorization and (2) staff approval of anticipated Town costs. Specific types of travel and training expenses costs which are not eligible for reimbursement can be obtained from staff.

# CONDUCTING THE PUBLIC BUSINESS RELATED LAWS AND POLICIES

All Public Agencies in California must comply with certain laws that ensure:

- The public is involved in the decision-making progress
- The decision-makers will not realize financial or economic gain from their participation in the decision
- That information generated and maintained by the agency is open for public inspection
- Public Officials are trained and maintain current understanding of ethics

The few exceptions allowed to these laws would involve a determination by the Town Attorney.

It is important for Commissioners to be aware that these regulations exist and have a basic understanding of the requirements. It is also important that Commissioners seek guidance from the Commission's staff wherever there is a question. The Commission's staff is trained to assist with general information and should seek advice from the Town Attorney when needed.

While the general descriptions of these laws are provided below - it is important that all Commissioners understand that the scope of these laws are larger and more comprehensive than summarized in this handbook.

**ETHICS TRAINING (AB 1234)**
In order to meet the requirements of California state law (AB 1234), all appointed Planning Commissioners, Parks and Recreation Commissioners and Public Art Advisory Commissioners are required to receive no less than two hours of training in general ethics principles and ethics laws every two years. Newly appointed commissioners should complete the required ethics training within the first year of appointment.

The Senior Citizen Advisory Commissioners, youth members, and ad hoc committee members are not subject to this required training.

**TRAVEL AND OTHER EXPENSE**
All travel and other expenses, where reimbursement is expected, must have budgetary approval in advance from the staff liaison. State law (AB 1234) requires officials seeking reimbursement to file an expense report, as well as make an oral report on the meeting or conference attended at its next regularly scheduled meeting.

**STATEMENTS OF ECONOMIC INTEREST (FORM 700)**
Only members of the Planning Commission are required to file annual Statements of Economic Interest (Form 700) with the Town Clerk for forwarding to the Fair Political Practices Commission, annually and upon assuming or leaving office.

# OATHS OF OFFICE & RELATIONSHIPS WITH THE TOWN COUNCIL

**OATH OF OFFICE**
Each newly appointed commissioner is required to take the Oath of Office as administered by the Town Clerk or his/her designee. This can be done at any time, during normal office hours, or as part of a commission meeting following the commissioner's formal appointment by Council. Upon completion of the oath, the commissioner is authorized to attend meetings and vote.

**RELATIONSHIPS WITH THE TOWN COUNCIL**
An advisory commission's role is advisory to the Town Council. The projects and issues upon which advisory commissions deliberate are delegated by the Town Council. There should be two-way communication so that the commissioners are aware of the long- and short-term goals and policies that the Council has adopted, and that the Council is receptive to new ideas which are presented by the advisory commission.

It is likely that at one time or another, the Council will not take the advice of the advisory commission. However, your own measure of success is not whether or not the Council accepts your specific recommendation; instead, the measure is whether or not the Town Council found your analysis useful and presentation of policy alternatives, and the ramifications of each.

Finding a comfortable relationship with the Council should be handled on an individual basis, but the following are some suggestions to remember that may be a good guide for you as you begin to find your way around in the political environment:

- Each advisory commissioner has an obligation to "vote their conscience" and will have to resolve conflicts they may have between a personal viewpoint and what is perceived as the "public interest."

- Contact with the Council should never be used to circumvent the staff or your commission.

- The advisory commission should not willingly or openly embarrass the staff or Council, or vice versa.

- The advisory commission should assist the Council in developing public trust in the advisory commission system.

- Should a controversy arise within the advisory commission, counsel and guidance are available from the staff. Advisory Commission/Council issues that can best be solved through a problem-solving approach shall first be addressed by the advisory commission Chair and the Mayor. If this does not resolve the issue, the Council may meet as a group with the advisory commission.

- It should be a rare instance when an individual commissioner attempts to influence or persuade the Council to assume a posture that may be in opposition to the advisory commission's position as a whole.

- Should a split opinion exist on advisory commission action, the majority report would be sent as the recommendation to the Council, with some attached explanation relating reasons for any dissent and any other minority reports.

**RELATIONSHIPS WITH STAFF**

There is typically one staff person assigned to each advisory group to act as secretary, to serve as one channel of communication between the advisory commission and the Council, and to research and investigate questions raised by the advisory commission. On work the advisory commission is preparing for the Council, staff is entitled to participate in advisory commission deliberations and to make recommendations. Staff suggestions may not be accepted all the time, but it is important that good relationships exist between the advisory commission and staff, so that together a reasonable solution can be derived. The following are some ways to avoid misunderstandings and to keep the channels of communication open:

- Contact should be with the staff member assigned to the advisory commission. When an individual commissioner wants to make contact with a higher-level supervisor (i.e. the Town Manager), the commissioner is asked to notify the assigned staff person of this contact.

- Contact with staff members should clearly be in the framework of the advisory commission assignment.

- Commissioners should not ask for individual reports, favors, or special considerations.

- Citizen complaints heard by commissioners should be referred directly to the staff person assigned to the advisory commission.

- Commissioners should realize that its recommendations are to be made to the Town Council, not to staff.

- If an advisory commission desires information which will require an excessive amount of the staff liaison's time, the liaison may need to get approval from their supervisor.

Town staff is required by the Town Council to make recommendations which may or may not agree with those of the advisory commission. The staff is required to fairly present the advisory commission's recommendations and explain them but will not defend them if in disagreement.

If a staff recommendation to the Council is contrary to an advisory commission recommendation, staff should give reasonable notice of the disagreement to the advisory commission Chair. When appropriate, and especially when the Town staff recommendation is not in accord with the approved advisory commission position, the advisory commission Chair or delegated representative should communicate in writing or be present at the Town Council meeting to report the advisory commission's recommendations. What the Council seeks is full and complete information, including a range of options on a given issue. Information critical to the decision making process, which the Council seeks from both the staff and the advisory commission, is the nexus between (1) the options and recommendations and (2) the General Plan.

In working with advisory commissions in their policy advisory role, staff has a responsibility:

- To serve if requested as secretary and to provide research assistance on issues under study by the advisory commission.

- To initiate suggestions so that the advisory commission has an idea how to seek out information or a resolution of the problem.

- To promote a team spirit, so that advisory commissioners can participate in a manner that will maximize their satisfaction in the organization. Recognizing commissioner contributions and encouraging involvement are two ways to let everyone know that their ideas are welcome.

- To inform commissioners about activities, projects and work that is taking place elsewhere in the organization and among other advisory commissions, particularly as these relate to issues under study by the advisory commission.

- To present a balanced report on controversial issues, so that both positive and negative aspects can be readily identified.

When the advisory commission becomes involved in helping the Town staff implement programs, it is no longer involved in its policy advisory role. Instead, it now has "changed hats" and has become a group of volunteers. As such, the commissioners are now subject to the same rules that apply to all other Town volunteers, working at the direction of staff.

**RELATIONSHIPS WITH THE TOWN ATTORNEY**

The Town Attorney is appointed by the Town Council. The Town Attorney advises the Town Council and Town officers (in their official capacity) in legal matters, attends all Council meetings and represents the Town in legal actions and proceedings. The Town Attorney maintains an attorney-client relationship with the Town, its officers, agents, and employees, so their official communications are protected as confidential attorney-client privilege. The Town Attorney rarely attends commission/committee meetings but may provide counsel to staff when legal issues arise on commission matters. The primary work of an advisory commission/committee is to consider different policy alternatives. Prior to the conclusion of a commission's research, it may have a question as to whether or not a particular option is allowed by law. In these instances, the advisory commission should forward its questions to its Commission or Committee staff liaison who will obtain an answer and if needed consulting consult with the attorney as necessary. It is important that the involvement of the Town Attorney, is done through staff, and be requested by the commission and not by the Commission/Committee or an individual commissioner/committee member. Staff will determine the level of consult.

**RELATIONSHIPS WITH COLLEAGUES ON THE COMMISSION**

Much of your work will involve reconciling contradictory viewpoints to build a consensus around common goals and objectives.

It is important that you cooperate with the other advisory commissioners and make every effort to understand differing points of view. One way of fostering this cooperation is for each commissioner to ensure that meetings proceed in an orderly and constructive manner by being familiar with the basic rules of parliamentary procedure as described in this Handbook.

Other important points you should consider in working with other advisory commissioners are as follows:

- Always respect the other individual's viewpoint, even though it may be opposite of yours.
- Allow other advisory commissioners adequate time to present their views fully before making comments.
- Be open and honest at all times.
- Recognize new commissioners and see that they are made welcome and receive assistance in becoming acquainted with the advisory commission.
- Represent the whole Town, not a special group or interest. The question, "What is best for the entire community?" should take precedence over, "What is best for my special interest group?"

**RELATIONSHIPS WITH OTHER ADVISORY COMMISSIONS**

The Town has a number of advisory commissions and sometimes there is an overlap of the policy areas for which each is responsible. Consequently, when issues arise which relate to the work of more than one advisory commission, the Council has to choose which advisory commission is the most appropriate. Occasionally, advisory commissions that have not been given responsibility for a project may want to provide input on an issue to the commission which has been assigned responsibility. When this occurs, it is incumbent upon the chair of the commission wishing to address the assigned commission discuss this with the Chair. This discussion is to occur before a second advisory commission gets involved in an issue assigned to others.

Advisory commissioners need to be sensitive to the amount of time that is spent on studying an issue. Often, issues being studied are awaiting resolution by one or more members of the public; the public does not usually appreciate having an issue being moved around from commission to commission, thereby creating an impression the issue is lost in a maze of bureaucracy.

**RELATIONSHIPS WITH OTHER ORGANIZATIONS**

It is not unusual for other organizations to contact advisory commissions and ask for your opinion or ask for support on a matter of importance to their organization. For example, the California Parks & Recreation Society may ask Windsor's Park and Recreation Commission for its opinion on a particular bill in the State Legislature or may ask our Commission to contact state legislators. Advisory commissioners need to be careful in their response. For example, in the situation just described, it is the Town Council that needs to take a position on pending state legislation and has the authority to speak on behalf of the Town to state legislators. On the other hand, if the California Park and Recreation Society (of which the Commissioners are members) is polling its members in order to help the California Parks and Recreation Society develop a Society position on an issue, then commissioners may convey their positions without Town Council involvement. These examples certainly are, at best, only suggestive of the preferred way to handle questions and requests for support from outside organizations. If you are in doubt as to how to handle a particular request, discuss the matter with staff or staff's liaison, who will keep members of the Council informed.

**RELATIONSHIPS WITH THE PUBLIC**

**Support citizen participation.**

The public interest is continuously reformulated through debate. Advisory commissioners must recognize the right of citizens to influence decisions that affect their well-being, advocate a forum for meaningful

citizen participation and expression in the process and facilitate the clarification of community goals, objectives, and policies. One of the most difficult things to do is to get an accurate reading of the "public opinion." It is difficult to resist the conclusion that when an issue attracts a roomful of spirited people to your meeting, then the rest of the population must also feel the same way about the issue. Advisory commissions are encouraged to seek additional methods of gathering citizen input that will result in a representative cross section of the community being heard.

**Expand choice and opportunity for all persons.**
Commissioners must strive to expand choice and opportunity for all persons, recognize a special responsibility to plan for the needs of disadvantaged persons, and urge the alteration of policies, institutions, and decisions which oppose such needs.

**Facilitate access to information.**
Commissioners must facilitate access. Individuals and public and private agencies possibly affected by a prospective decision need to receive adequate information in advance of the decision.

**Maintain public confidence.**
In performance of the public trust, the conduct of commissioners should be such as to maintain public confidence in the commission.

# MEETINGS

**Procedures**
Commissions/Committees shall be governed in the conduct of their meetings by the same rules which are applicable to the Town Council.

**MOTIONS**
As a general rule, motions should follow Roberts Rules of Order to provide consistency. When a member wishes to propose an idea for the commission to consider, the member must make a motion. This is the only way an idea or proposal from a member can be presented to the body for discussion and possible action. A motion goes through the following steps:

1. The member asks to be recognized by the Chair.
2. After being recognized, the member makes the motion (“I move …”)
3. Another member seconds the motion.
4. The Chair states the motion and asks for discussion.
5. When the Chair feels there has been sufficient discussion, the debate is closed (i.e., “Are you ready for the question?” or “Is there any further discussion?”).
6. If no one asks for permission to speak, the Chair puts the question to a vote.
7. After the vote, the Chair announces the decision (“The motion is carried” or “The motion fails,” as the case may be.) (In addition, the secretary of the commission must publicly report the vote or abstention on that motion of each member present for the motion.)

Phrasing a motion is often difficult and corrections may be necessary before it is acted upon. Until the Chair states the motion (step 4), the member making the motion may rephrase or withdraw it. If the original motion has already been seconded, the consent of the second is required. After the motion has been stated by the Chair, the consent of the body is required to change or withdraw it. An amendment may be offered to a motion, which must also be seconded, and then acted upon by the members. After an amendment is approved, the original motion as amended still must be voted upon. It is particularly

important when a motion is amended that the Chair restate the motion so that members are clear on what they are voting on.

**DIVIDED MOTIONS**
In making motions, members should try to avoid including more than one proposal in the same motion. This is especially important when members are likely to disagree. If a member would prefer to see proposals divided and voted upon separately, the member should ask the Chair to divide the motion. If other members do not object, the Chair may proceed to treat each proposal as a distinct motion to be acted upon separately. The request to divide may also be made by motion. The minutes should indicate how each member voted.

**ADJOURNMENT**
When a commission has finished its business, a motion to adjourn is in order. This motion is not debatable, and so it is the duty of the Chair to see that no important business is overlooked.

**APPOINTMENT OF CHAIR AND VICE CHAIR**
The Chair and Vice Chair are selected by the majority of the commission for a one-year term and shall hold this position until a successor is appointed or until their terms as members of the commission expire. Members may serve consecutive years. It is suggested that appointments occur at the beginning of the calendar year at either a regular or special meeting, typically in January or February. All chair and vice chair appointments shall take place at a noticed meeting and be recorded in the minutes. The willingness and ability of an individual to serve as the chair or vice chair should be taken into consideration. Commissions should try to give all commissioners an opportunity to serve as chair, however, the responsibilities of service as chair and vice chair do take some extra time.

Nominating members for Chair/Vice Chair Commissions is done by formal motions to appoint specific individuals. Followed by a second and then a vote. Members do not have to be present to be elected Chair/Vice Chair. However, the motion must be made by a member present at the meeting where the action is taking place and approved by the Commission majority present at the meeting.

**DUTIES OF THE CHAIR**
The Chair of the advisory commission presides at all meetings of the advisory commission and is a spokesperson for the commission. It is the Chair's role to facilitate meeting protocol. Staff liaisons may assist the Chair in starting the meeting on time, and also provide guidance in meeting protocol. Staff may also facilitate and promote effective communication. In the absence of the Chair, the Vice Chair temporarily assumes the Chair's duties. In the absence of both the Chair and Vice Chair, a Temporary Chair may assume the role. The Temporary Chair is selected by the Chair or nomination and support of a senior member. Duties include the following:

- The Chair runs the meeting.
- Start meetings on time.
- Ensure that consideration of items on the agenda moves along without delay and that petitioners, proponents and opponents are heard but not allowed to disrupt the meeting.
- Announce at the start of the meeting if the order of agenda items is to be rearranged either for convenience, response to those attending only for certain items, or for better pacing of the agenda.

- Clarify ideas as they are discussed and repeat motions made in order that all the commissioners understand the wording of the item on which they are to vote. The Chair is responsible for ensuring that advisory commission actions are properly moved, seconded, and voted upon. The Chair is the Commission's parliamentarian and shall apply the same parliamentary rules as apply to the Town Council.

- Be fair, impartial, and respectful of the public, Staff, and each other. Give your full attention when others speak.

- Trust your own good judgment on decisions.

- Keep in mind that people may be attending a meeting for the first time and may be unfamiliar with the advisory body procedures. In your discussion, either avoid or explain technical terms or verbal shorthand.

- Listen to audience concerns.

- Do not engage in side conversations or otherwise be distracted.

- Refrain from using electronic devices for communication purposes during a meeting, unless deemed a personal emergency.

- Do not engage the public in debate. Remember that your advisory body exists to consider major issues and take actions. It is not simply a discussion group or debating society or to become sidetracked by lesser concerns.

- Protect advisory body members, staff, and the public from personal attacks.

- End meetings at a reasonable hour.

- The Chair should attempt to identify the points of agreement among the opinions of the commissioners in order to build a consensus.

**OPEN MEETINGS AND THE BROWN ACT**

All meetings, including "informal" or "study" sessions of the commission are open to the public. Agendas must be properly posted in advance so that the public has an opportunity to learn about upcoming meetings. A 72-hour advance notice is required for regular meetings and a 24-hour notice for special meetings.

Advisory commissions are subject to the State statute referred to as the "Brown Act." The Ralph M. Brown Act, commonly referred to as the "Brown Act," is codified in the California Government Code beginning at Section 54950. The Brown Act mandates that local government business be conducted at open and public meetings, except in certain limited situations (i.e., closed sessions). The central provision of the Brown Act requires all "meetings" of a "legislative body" to be open and public. The Brown Act broadly defines the term "meeting" to include any congregation of a majority of the members of a particular legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body. Windsor Commissions and Committees are under the Brown Act. A majority of the members of the legislative body are prohibited from discussing (including on social media), deliberating about or developing a collective concurrence regarding any item that is within the body's jurisdiction except as part of a duly noticed public meeting. The purpose of these

provisions is to ensure that local governing bodies deliberate in public.

The Brown Act also requires that the public be given notice of the time and place meetings are to be held. As a general rule, a legislative body may not act on or discuss any item that does not appear on the agenda posted for the meeting.

The Brown Act protects the public's right to attend and participate in meetings and requires that agendas for legislative bodies provide an opportunity for the public to address the body. Consult the city clerk for specific requirements and procedures for establishing public comment procedures and time limits for speakers.

The Brown Act requires that an agenda allow for two types of public comment. The first is general audience comment, where the public can comment on any item of interest that is not on the agenda but is within the jurisdiction of the legislative body. The second type of public comment specifically pertains to items on the agenda.

Care should be taken to make sure that if a quorum of an advisory body is gathered at a public or private place, no public business is discussed and that the gathering will not be interpreted as a meeting. If a member discusses a matter with a majority of other members, one at a time or in small groups, outside of the public meeting, it will constitute a “Serial Meeting” and will violate the Act. Care should also be taken with regard to emails. Never select “Reply All” to an email to all advisory body members, or forward an email sent to you by one advisory body member to another advisory body member as that could constitute a quorum and would violate the Act.

**SB 343 - DOCUMENTS RELATED TO OPEN SESSION AGENDAS**

Any writings or documents provided to a majority of the Planning Commission/Advisory Commissions regarding any item on the agenda after the posting of the agenda and not otherwise exempt from disclosure, will be made available for public review at the Windsor Civic Center, located at 9291 Old Redwood Highway, Building 400, Windsor, during normal business hours, and on the Town's website at www.townofwindsor.com.

If the supplemental materials are made available to the members of the Planning Commission/Advisory Commissions at the meeting, a copy will be available for public review at the Civic Center Council Chambers located at 9291 Old Redwood Highway, Building 400, Windsor, CA 95492.

These writings will be made available in appropriate alternative formats upon request by a person with a disability, as required by the Americans with Disabilities Act.

**TYPICAL PROCEDURE FOR HANDLING AGENDA ITEM**

1. The Chair states the title of the agenda item.

2. The staff gives an oral report explaining the action requested, the facts and issues, and the staff recommendations.

3. Commissioners ask questions of staff; however, this is not the time for commissioners to begin discussing their viewpoints on the issue.

4. The Chair acknowledges any correspondence about the application that has been received.

5. Members of the public are heard. All interested speakers are given an opportunity to speak once. The Chair needs to consider time constraints when deciding to allow speakers to be heard a second time.

6. Applicants and members of the public are given the opportunity to rebut earlier comments.

7. The Public testimony portion is closed.

8. Commissioner discussion and action by the advisory commission.

With respect to those members of the public wishing to speak, the following guidelines are offered:

- Names and Addresses. All speakers are asked to state their names and addresses for the record on a voluntary basis. They may also request to be notified about any future meetings on their intended subject.

- Questions. Questions for commissioners, other people in the audience, and the staff should be directed through the Chair, rather than directly at the person.

- Brief Presentations. As much as possible, speakers should express their comments concisely and briefly. In general, five minutes is a good rule of thumb for the maximum length of a speech by a person representing an organization and three minutes for statements of individuals. Speakers should try not to repeat earlier statements.

  Groups are urged to designate one or two speakers per group.

- Relevancy. Remarks should be directed to the merits of the application and not to the character of the applicant or any other speakers.

**CONFLICT OF INTEREST**

Common law generally prohibits public officers, including advisory commissioners, from engaging in activities in which their private interest's conflict with their public duty. As one court has stated, "a public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence, and primarily for the benefit of the public."

The Political Reform Act of 1974 (also known as "Proposition 9") provides that no local official shall make, participate in making, or in any way attempt to use their official position to influence a government decision in which they know, or has reason to know, of a financial interest.

Commissioners are not prohibited from representing public interest groups before the Town Council or other advisory commissions. Under such circumstances, however, a commissioner should state on the record that they are appearing before the advisory commission or Council in their private capacity only, not as a commissioner. Advisory commissioners are urged to take all possible steps to avoid even the appearance of impropriety in any presentation which they may make to other advisory commissions or to the Council.

The laws and regulations regarding conflicts of interest are rapidly changing. Also, whether or not a conflict exists is sometimes very specific to the facts of a particular situation. If a commissioner has any questions about the possibility of a conflict of interest, they are urged to contact the Town Attorney.

**VOTING ABSTENTION POLICY**
When a voting member of an advisory commission is legally required to abstain from voting, they are also forbidden to participate or influence the other commissioners or staff in any way. If a commissioner decides to abstain from voting for legally required reasons, the commissioner must disclose the conflict and leave the meeting room during all discussions on the subject. The minutes should also state that the member did not participate in discussion of the matter and include the reason for the abstention.

Several statutes and common law rules governing conflicts of interest apply to advisory commissioners. Planning Commissioners, Parks and Recreation Commissioners, Public Art Advisory Commissioners and Senior Citizen Advisory Commission members may need more information from staff and/or the Town Attorney. Advisory commissioners who provide contracted services and have a direct financial interest will need to recuse themselves from item discussion. Advisory commissioners especially may want to seek out guidance when issues under discussion are within 500 feet of their residence or other property they own; or when issues under discussion are more than 500 feet but less than 1,000 feet from their residence or other property they own, and the decision would change the parcel's:

a) Development potential
b) Income producing potential
c) Highest and best use
d) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality
e) Market value

# INDIVIDUAL RIGHTS VERSUS ADVISORY COMMISSION RESPONSIBILITIES

**HOW CAN YOU PARTICIPATE IN POLITICAL ACTIVITIES?**
Local government elections in California are nonpartisan. Council appointments to Town advisory commissions are made without regard to political party affiliation or Town district. Acceptance of an appointment to an advisory commission does not in any manner restrict your participation in political activities at any level of government, be it local, state or federal. However, to reflect the fact that only elected officials may set Town policy. If you are a candidate for an office, such as Town Council, you may state that you have been (or are) an advisory commissioner on your campaign literature. If you currently serve on an advisory commission, you can include this on the official ballot.

**HOW DO YOU REPRESENT YOURSELF AS A CITIZEN ON NON-ADVISORY COMMISSION ISSUES?**
This is one of the most sensitive areas for a commissioner to understand and address. As a concerned citizen, you have every right to express your views on issues and concerns that are important to you. However, the very fact that you have been appointed as a commissioner to represent the Town does place you in a highly visible position in the community. You should avoid referring to your role as a commissioner when addressing the Town Council on issues unrelated to the advisory commission you serve on. The Council requires that you follow the procedure adopted for citizens who address the Council and simply state your name and address. If someone points out that you are a commissioner, you should emphasize that you are speaking as a citizen, representing yourself. The same is true if you are addressing other organizations or the general public, including participation in any political activity.

**ONE LAST WORD**
The Town Council would like to thank you for accepting this position and for devoting your time and effort to become actively involved in this community.

# ATTACHMENTS

1. Ordinance No. 92-07 - Establishing a Planning Agency Consisting of a Planning Commission
2. Ordinance No. 2003-169 - Amending Section 1-5-105 (Planning Commission Appointment) and Section 1-5-110 (Members, Removal from Office) of the Town of Windsor Code
3. Planning Commission By-Laws
4. Resolution Rescinding No. 2656-10 Amending Established Parks and Rec Commission Roles Responsibilities
5. Resolution Rescinding No. 3764-22 Amending Public Art Advisory Commission Member Composition
6. Resolution Rescinding No. 3476-18 Amending Senior Citizen Advisory Commission Roles and Responsibilities
7. Resolution No. 3778-22 Establishing a Code of Ethics and Conduct for Elected and Appointed Officials
8. Guide to the Ralph M. Brown Act (Revised 2016)

**ORDINANCE NO. 92-07**

**AN ORDINANCE OF THE TOWN OF WINDSOR**

**ESTABLISHING A PLANNING AGENCY CONSISTING OF A PLANNING COMMISSION**

THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES ORDAIN AS FOLLOWS:

**Section 1.** Planning Agency Established. Pursuant to Government Code Sections 65000 et seq. (the Planning and Zoning Law), there is hereby established a planning agency consisting of a Planning Commission.

**Section 2.** Planning Commission: Appoint. The Planning Commission shall consist of five members nominated by each Council Member and appointed by the Town Council. They shall be appointed for a term of four years except that the members first appointed shall, at their first meeting, determine by lot that three members shall serve initially for a four year term and two members a two year term. Terms shall begin on the date of the first meeting of the Commission. If a vacancy occurs otherwise than by expiration of term, it shall be filled by appointment for the unexpired portion of the term.

**Section 3.** Members: Removal From Office. Although a member shall be appointed for a term, he or she may be removed by a majority vote of all the members of the Town Council. A member who fails, without permission, to attend three successive meetings of the commission is subject to removal.

**Section 4.** Expenses. Planning Commission members shall be entitled to reimbursement for expenses as the Town Council may approve.

**Section 5.** Chairperson; Rules; Records and Meetings. The Planning Commission shall elect a Chairperson and Vice Chairperson from its membership annually. In the absence or disability of either the Chairperson or Vice Chairperson, the Commission may designate a temporary Chairperson. The Commission shall hold at least one regular meeting each month and such other meetings as may be necessary. The Commission shall adopt rules for the transaction of its business and shall keep a public record of its resolutions, transactions, findings and determinations. The rules shall provide that not less than three affirmative votes shall be required to recommend matters to the Town Council for adoption. The Commission shall appoint a secretary who may be one of its members or someone else.

**Section 6.** Functions. The Planning Commission shall perform those functions described by the Planning and Zoning Law, including those functions specified in Government Code § 65103.

**Section 7.** Effective Date. This Ordinance shall take effect immediately pursuant to Government Code section 36937(b) as an urgency ordinance. The urgency is based on the following facts:

A. The Town of Windsor was incorporated July 1, 1992;

B. Section 65101 of the Government Code requires the Town Council to create a Planning Commission.

**Section 8.** Posting. The Town Clerk of the Town of Windsor shall cause this Ordinance to be posted in at least three (3) public places in the Town of Windsor in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED AND ADOPTED this 1st day of July, 1992, by the following vote:

AYES: **JULIE ADAMSON, MAUREEN MCDANIEL, ALLAN RAWLAND, BARBARA SIEGLER AND MAYOR JOSEPH D. RODOTA**

NOES: **NONE**

ABSENT: **NONE**

ABSTAIN: **NONE**

Joe Rodota
MAYOR

ATTEST:

Paula A. Williams
TOWN CLERK

323\Res\07.Ord



CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and accurate copy of Ordinance No. 92-07 of the Town of Windsor and that said ordinance was published according to law.

Audrey Hooper, Deputy
Town Clerk

Dated: 7-7-03

**ORDINANCE NO. 2003-169**

**AN ORDINANCE OF THE TOWN OF WINDSOR AMENDING SECTION 1-5-105 (PLANNING COMMISSION APPOINTMENT) AND SECTION 1-5-110 (MEMBERS, REMOVAL FROM OFFICE) OF THE TOWN OF WINDSOR CODE**

THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES ORDAIN AS FOLLOWS:

Section 1. Windsor Municipal Code Section 1-5-105 is hereby amended to read in its entirety as follows:

> "1-5-105 Planning Commission; Appointments. The Planning Commission shall consist of five members. Each Councilmember shall appoint one Planning Commissioner for a term coinciding with the term of the Councilmember making the appointment. Terms shall begin on the date of the first meeting of the Commission after appointment. If a vacancy occurs otherwise than by expiration of term, it shall be filled by appointment by the Councilmember whose previous appointee has caused the vacancy to occur."

Section 2. Windsor Municipal Code Section 1-5-110 is hereby amended to read in its entirety as follows:

> "1-5-110. Members: Removal From Office. Although a member shall be appointed for a term, he or she may be removed at the sole discretion of the Councilmember who made the appointment. A member who fails, without permission, to attend three successive meetings of the Commission is subject to removal. The seat vacated by the removal of a member shall be filled by appointment by the Councilmember who appointed the member removed."

Section 3. Effective Date. This Ordinance shall take effect and be in force 30 days following its adoption.

Section 4. Posting. The Town Clerk of the Town of Windsor shall cause this Ordinance to be posted in at least three (3) public places in the Town of Windsor in accordance with Section 36933 of the Government Code of the State of California.

**PASSED, APPROVED AND ADOPTED** this 21st day of May 2003 by the following vote:

**AYES:** **COUNCILMEMBERS ALLEN, MOREHOUSE, SALMON AND MAYOR PRO TEM FUDGE**
**NOES:** **NONE**
**ABSTAIN:** **NONE**
**ABSENT:** **MAYOR SCOTT**

Deborah Fudge
**MAYOR**

**ATTEST:**
Audrey Hagen
**DEPUTY TOWN CLERK**

# TOWN OF WINDSOR
# PLANNING COMMISSION
# BY-LAWS

## 1. Officers and Elections

1.1 Officers shall consist of Chair, Vice Chair and Secretary.

1.2 The Chair and Vice Chair shall be members of the Commission elected therein, shall be elected by the membership and shall serve at their will.

1.3 Election of Chair and Vice Chair shall be held annually at the second regular meeting in January, with the exception of the appointment of new Commissioners after a Town Council election. In the case of the appointment of new Commissioners after a Council election, the annual election of Chair and Vice Chair will be held at the first meeting that the new Commissioner's are seated. REV 01/97

1.4 No member of the Commission shall serve as Chair for more than 24 consecutive months.

## 2. Duties of Officers

2.1 The Chair shall:

2.11 Preside at all meetings.

2.12 Call special meetings in accordance with the bylaws and the procedural requirements of the Brown Act. REV 10/01

2.13 Sign documents of the Commission.

2.14 See that all actions of the Commission are properly taken.

2.15 Participate, as necessary, in the development of the Commission Agenda.

2.16 Assign members to subcommittees, representative and liaison duties.

2.2 The Vice Chair Shall:

2.21 During the disability, disqualification or absence of the Chair, perform all the duties of the Chair.

2.22 Succeed the Chair if that position is vacated before the term is completed. The Vice Chair shall serve the unexpired term of the vacated office. A new Vice Chair shall be elected at the next regular meeting.

2.3 The Secretary Shall:

2.31 Prepare or provide for the preparation of a record of all Commission meetings.

2.32 Prepare a written agenda for all meetings of the Commission.

2.33 Insure that each agenda provides an item headed "Public Appearances" in addition to any public hearing that may be noticed on the Agenda.

2.34 Post an Agenda for each regular meeting at least 72 hours before each meeting in the designated area of the Town Hall freely accessible to members of the public. REV 10/01

2.35 Inform the Commission of all correspondence relating to the business of the Commission and attend to such correspondence where possible.

2.36 Insure that, in the preparation of the agenda, consideration is given to the Brown Act requirement: that, unless an item is listed on the agenda, the Commission is prohibited from "taking action."

2.37 Give priority to those matters referred to them by the Town Council.

2.38 Insure that all applications submitted to the Commission conform with submittal requirements established by law, the Community Development Department and the Commission.

2.39 Prepare, post and publish public notices, including notices of public hearings required by law or by the Commission.

2.40 Handle funds allocated to the Commission, in accordance with Town regulations.

2.41 Be custodian of the records and sign official documents of the Commission as directed.

## 3. Meeting Place, Time and Attendance

3.1 All regular meetings will be held on the second and fourth Tuesdays of the month at 5:30 p.m. in the Windsor Civic Center, Town Council Chambers, 9291 Old Redwood Hwy, Building 400, unless proper notice of a meeting at an alternate time and/or site is given. REV 5/96 REV 4/98 REV 11/02

3.2 The Commission will adopt an annual advance schedule of regular meetings in November of each year for the following year.

3.3 The Chair or a majority of the members entitled to vote may call a special meeting as deemed necessary, provided proper 24-hour notice can be given and subject to the procedural requirements of the Brown Act. REV 10/01

3.4 In conformance with Town Council policy, it is expected that Commission

members will attend at least 75 percent of regularly scheduled Commission meetings.

3.5 Members who expect to be absent from a scheduled meeting shall notify the Secretary at the earliest opportunity. The Secretary shall notify the Chair in the event the projected absences will provide a lack of quorum. A member who fails, without permission to attend three (3) successive meetings of the Commission is subject to removal. [See Windsor Town Code §1-5-110.] REV 10/01

3.6 Any meeting of the Commission may be cancelled in advance by a majority vote of the Commission. The Chair may cancel a meeting in the case of an emergency or when a majority of Members are unavailable to attend a meeting.

## 4. Quorum and Voting

4.1 A majority of the Commission members entitled to vote shall constitute a quorum. No business may be transacted at a regular or special meeting unless a quorum of the membership is present. If enough Commissioners abstain due to a conflict of interest so as to lose a quorum, the Commission shall exercise the rule of necessity to regain a quorum by having the disqualified Commissioners draw straws until a quorum is reached. The Commissioners so chosen shall continue to participate in that matter until concluded. The rule of necessity shall not be invoked to allow an otherwise disqualified Commissioner to vote if a quorum can be convened of other members of the agency who do not have a conflict of interest, whether or not such other members are actually present at the time of disqualification. REV 10/01

4.2 Except where otherwise required by law, actions by the Commission shall be by a majority of the quorum of the Commission present when action is taken provided however that not less than three (3) affirmative votes shall be required to recommend matters to the Town Council for adoption. [See Windsor Town Code §1-5-120.] REV 10/01

4.3 Voting will be by verbal vote. Each member present at the meeting when a question comes up for a vote shall vote for or against the measure unless disqualified from voting and he/she abstains because of such disqualification.

4.4 Individual members may submit minority reports to the Town Council on actions of the Commission. A member wishing a minority report to be made must indicate this at the time action is taken.

4.5 In the event of a tie vote, which cannot be resolved by any appropriate motion, the matter shall be delivered to the Town Council for resolution, except for items initiated by the Commission, in which event the matter shall be considered as denied.

4.6 If a member is required to abstain from voting due to prohibitions of State law, such member must also leave the podium and remain silent during any deliberation of the matter. When these circumstances exist, that Commissioner will state the reason for abstention and such reason will be noted in the minutes.

4.7 If a vote is on a resolution or a proposed ordinance, which has been sent back to staff for redrafting in accordance with directions given at a previous meeting, the vote on the redraft remains the same as was the vote on the original motion, unless a Commissioner has decided to switch his policy opinion. The vote does not reflect whether or not the redraft adequately reflects the former action.

## 5. Conduct of Meetings

5.1 All meetings, including "informal" or "study" sessions of the Commission will be open and public and all persons desiring to attend shall be permitted to attend any meeting.

5.2 An opportunity will be provided under the "Public Appearances" headed item for members of the public to address the Commission on matters under its jurisdiction which are not on the agenda for that meeting.

5.3 Except as otherwise provided in these bylaws, the Chair shall conduct all meetings in such a manner as deemed appropriate.

5.4 Each speaker appearing before the Commission will be requested to:

5.41 State the speaker's name and address if speaking as a resident, or identify the property or organization represented.

5.42 Make the presentation at the speaker's stand, unless maps or other visual presentation requires standing elsewhere.

5.43 Address the Commission through the Chair. There shall be no direct communication with other members, any staff member or any other individual except as recognized and authorized by the Chair.

5.5 The Commission may, either at the beginning of a hearing or pursuant to a motion to limit debate, place time limits on speakers.

5.6 Robert's Rules of Order, revised, are adopted for governing the Commission in all cases to which they may apply, and in which they are not inconsistent with the Civil Code.

## 6. Procedure for Consideration of Agenda Items

6.1 The following procedure will normally be observed; however, it may be rearranged by the Chair for individual items if necessary for the expeditious conduct of business.

6.11 Staff presents reports and makes recommendations.

6.12 Members may ask questions regarding the staff presentation and report. If applicable, the public hearing is opened upon completion of this procedure.

6.13 Proponents of the agenda item make presentations.

6.14 Any opponents make presentations.

6.15 Applicant makes rebuttal of any points not previously covered. If applicable, the public hearing is closed upon completion of this procedure.

6.16 Members may ask any questions it may have of the staff, proponents and opponents, and then take appropriate action.

6.2 All matters listed under "Consent Calendar" are considered to be routine and will be enacted.

6.3 No item appearing on the agenda shall be introduced for consideration after 11:00 p.m.

## 7. Policy

7.1 All matters of policy not covered by law shall be adopted by resolution and, when so adopted, shall be considered official policy of the Commission.

## 8. Information for Commission Members

8.1 To assist Commission Members in the orderly conduct of their official business, the Secretary will provide each member an initial issue and will maintain current the following:

8.11 A copy of the General Plan, an up-to-date map of Town zoning and a copy of State and Town CEQA Guidelines.

8.12 A complete file of all Town ordinances related to planning.

8.13 Copies of all applicable policies, procedures and special reports.

8.14 A schedule of terms of office.

8.15 A list of incomplete and unscheduled items.

8.16 A copy of the Town's Commissioner's Handbook.

## 9. Information for the Public

9.1 The Secretary shall provide for making available to the public, subject to the fee schedule adopted by the Town Council, various documents containing such information as the Planning Commission schedule, information and data required for filing various types of applications, all ordinances and policies used by the Community Development Department, these bylaws and the adopted public hearing procedure.

9.2 The following language shall be printed on every Planning Commission agenda which contains a public hearing:

"If you wish to address the Commission, please state clearly your name, address, and whom you represent.

The purpose of a public hearing is to supply the Planning Commission with information that it cannot otherwise obtain. Because Commission meetings often last until a very late hour, please limit your testimony to factual information. In fairness to others, please avoid repeating previous testimony, and observe any time limits which may be announced. Thank you for your consideration.

Applicants are expected to attend or be represented at all public hearings. Failure to do so could result in delaying the processing of the application."

9.3 The public hearing procedure adopted in Section 6.1, supra, will be available to the public at every Planning Commission meeting normally to be included within the Planning Commission Information Pamphlet.

## 10. Staff Reports

10.1 By copy of these Bylaws and commensurate with the assigned role of providing general staff assistance to the Commission, the Planning Staff is requested to:

10.11 Prepare a brief report on each item scheduled on the agenda for transmittal to the Commission with the agenda.

10.12 Provide the aforementioned reports to the Commission at least six days prior to the meeting, except where law or Town policy makes it impractical.

10.13 Mail or otherwise deliver to the applicant a copy of the applicable report concurrent with delivery to the Commission.

10.14 Make copies of these reports available at the Town Hall to the public after they have been delivered to the Commission, with no fee for one copy.

## 11. Records

11.1 Each applicant shall be furnished a copy of the final resolution stating the action taken on his application.

11.2 A tape recording of each meeting shall be made and filed in the office of the Secretary of the Planning Commission. Tapes shall be retained for a period of not less than three (3) years. REV 10/01

11.3 Resolutions and other pertinent information shall be permanently filed in the office of the Secretary of the Planning Commission.

11.4 One complete copy of the "packet" of material furnished each Commissioner prior to the meeting shall be filed with the approved minutes.

11.5 Any corrections to draft Commission minutes normally should be conveyed to the Secretary prior to the beginning of the Commission meeting at which said minutes are to be considered for adoption.

## 12. Reports to the Town Council

12.1 In the furtherance of the role of the Commission, the Planning Staff is requested to prepare and submit a brief report to the Town Manager on all actions taken by the Planning Commission which require subsequent Town Council action. Such reports shall include minutes and approved Planning Commission resolutions.

12.2 The Chair of the Planning Commission or the designated representative may, by appropriate correspondence or personal appearance, be solely responsible to provide amplifying information to the Town Council.

12.3 In the event that a complex or unusual situation arises from a recommendation made to the Town Council by the Planning Commission, the Chair may be requested by the Town Council to respond to questions related to the recommendation. The Chair shall only represent the Commission's decision, answer relevant questions regarding the decision and not express any personal opinion (even if the Chair's vote was not on the prevailing side of the vote) regarding the matter.

12.4 The Planning Commission shall annually prepare a work plan and submit same to the Town Council for approval. [See Windsor Town Code §1-5-125.] REV 10/01

## 13. Statement of the Code of Ethics

13.1 Attached is a Code of Ethics which shall be applicable to the ethical conduct by members of the Commission in the performance of their official duties are contained in Exhibit A, attached hereto and made a part of these Bylaws.

## 14. Amending the Bylaws

14.1 Except with respect to provisions required by law, these bylaws may be amended at any meeting of the Commission, provided that notice of said proposed amendment is given to each voting member at least five days prior to said meeting. REV 10/01

## 15. Miscellaneous

15.1 Inconsistencies: The Town of Windsor Municipal Code, the Brown Act, or other controlling state law shall prevail over any provisions in these Bylaws which are inconsistent. REV 10/01

15.2 Non-Observance of Bylaws: These Bylaws are adopted to expedite and facilitate the transaction of the business of the Windsor Planning Commission in an orderly fashion and shall be deemed to be procedural only, and the failure to strictly observe any such Bylaws shall not affect the jurisdiction of, or invalidate any action taken by the Planning Commission. REV 10/01

15.3 Non-Exclusive Bylaws: Bylaws set forth are not exclusive and do not limit the inherent power and general legal authority of the Planning Commission, or its presiding officer, to govern the conduct of Planning Commission meetings as may be considered appropriate and not inconsistent with these Bylaws from time to time or in particular circumstances for the purposes of orderly and effective conduct of the affairs of the Town. REV 10/01

Approved by the Planning Commission on August 13, 1992 .

Amended Section 3.1 by Planning Commission on April 13, 1994.

Amended Section 1.3 by Planning Commission on July 27, 1994.

Amended Section 3.1 by Planning Commission on March 14, 1995.

Amended Section 3.1 by Planning Commission on May 23, 1996.

Add Section 12.3 by Planning Commission on June 13, 1996.

Amended Section 1.3 by Planning Commission on January 9, 1997.

Amended Section 3.1 by Planning Commission on April 9, 1998.

Amended Section 2.12, 2.34, 3.3, 3.5, 4.1, 4.2,
11.2, 12.4, 14.1, 15.1, 15.2,15.3 October 11, 2001

Amended Section 3.1 by Planning Commission on November 14, 2002

Attachments:

Exhibit "A": Town Council Policy - Code of Ethics

# EXHIBIT "A"

# TOWN COUNCIL POLICY
# CODE OF ETHICS

In order to assist in meriting the confidence and respect of the public and our colleagues, the Commission, Board and/or Committee hereby establishes the following guidelines for ethical conduct in the practice of carrying out planning responsibilities. These ethical principles are designed for the sole purpose of providing guidance to members in the daily exercise of their duties as members. They are designed to assist a Commission, Board and/or Committee member in choosing a proper course of action when faced with an ethical dilemma. Violation of any of the listed principles should not serve as an independent source of challenge to any decision or action of the Commission, Board and/or Committee, nor should it serve as evidence of improper conduct in any challenge to any action by a member or by the Commission, Board and/or Committee as a whole. The decision to act or not to act in any given situation, which might arguably be governed by one or more of the principles, rests solely with the individual commissioner; the ethical principles do not serve as a source of power to the Commission, Board and/or Committee or to any other person to obligate any individual Commissioner to act or not act in any certain way.

**Support Citizen Participation.** The public interest is continuously reformulated through debate. Commission, Board and/or Committee members must recognize the right of citizens to influence decisions that affect their well-being, advocate a forum for meaningful citizen participation and expression in the process and facilitate the clarification of community goals, objectives, and policies.

**Recognize the Comprehensive Nature of Decisions.** Commission, Board and/or Committee members must recognize the comprehensive nature of decisions. They must balance and integrate physical, economic, and social characteristics of the community. In making decisions, they must continuously assemble and consider all relevant facts, advice, alternatives and means of accomplishing those alternatives. Special concern must be demonstrated for the long-range consequences of these decisions.

**Expand Choice and Opportunity For All Persons.** Commission, Board and/or Committee members must strive to expand choice and opportunity for all persons, recognize a special responsibility to plan for the needs of disadvantaged persons, and urge the alteration of policies, institutions, and decisions which oppose such needs.

**Facilitate Coordination Through the Planning Process.** Commission, Board and/or Committee members must facilitate coordination. They must insure that individuals and public and private agencies possibly affected by a prospective planning decision receive adequate information in advance of the decision.

**Promote Balance in the Use and Conservation of Historical, Cultural and Natural Resources.** Commission, Board and/or Committee members must promote balance in the use and conservation of historical, cultural, and natural resources.

**Avoid Conflict of Interest.** Commission, Board and/or Committee member's attention is invited to the guidelines on this subject contained in the Windsor Handbook for Commission Members.

**Render Thorough and Diligent Planning Service.** Commission, Board and/or Committee members must render thorough and diligent planning service. Should a member believe he or she can no longer render such service, that person should resign from the Commission. Alternatively, if the member has not sufficiently reviewed relevant facts and advice affecting a public planning decision, he or she must refrain from participating in that decision.

**Seek No Favor.** Commission, Board and/or Committee members must seek no favor. They must not directly or indirectly solicit any gift or accept or receive any gift (whether in money, services, loans, travel, entertainment, hospitality, promises, or in some other form) under circumstances in which it could reasonably be inferred the gift was intended or could reasonably be expected to influence the member in the performance of his or her duties, or was intended as a reward for any public action on the member's part.

**Do Not Disclose or Improperly Use Confidential Information for Financial Gain.** Commission, Board and/or Committee members must not disclose or improperly use confidential information for financial gain. They must not disclose to others or use to further a personal interest confidential information acquired by them in the court of public duties.

**Ensure Access to Public Planning Reports on an Equal Basis.** Commission, Board and/or Committee members must ensure that the nonconfidential reports and records of the Commission, Board and/or Committee are open on an equal basis to all inquirers. They must ensure that public hearings on planning questions permit presentation of information on behalf of any party to a question only at the scheduled hearing, not in private, unofficially, or with other interested parties absent. Partisan information received in the mail or by telephone or other communication must be made part of the public record by the member receiving such information.

**Respect the Other Individual's Viewpoint.** Commission, Board and/or Committee members must always respect the other individual's viewpoint even though it may be opposite to their own.

**Maintain Public Confidence.** In their performance of the public trust, Commission, Board and/or Committee members must conduct themselves so as to maintain public confidence in the Commission, Board and/or Committee and the Town of Windsor.

Approved by the Council-elect on June 10, 1992.

**RESOLUTION NO.**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR RESCINDING RESOLUTION NO. 2656-10 AND AMENDING THE ESTABLISHED PARKS AND RECREATION COMMISSION ROLES**

**WHEREAS,** on April 5, 1992, the Windsor Town Council established a Parks and Recreation Advisory Commission to serve in an advisory capacity to the Town Council for the purpose of park planning and development, recreation activities, programming and leisure and Parks and Recreation; and

**WHEREAS,** on April 5, 1995, the Windsor Town Council superseded Resolution No. 92-92 with Resolution No. 418-95; and

**WHEREAS,** on May 17, 1995, the Windsor Town Council established a Windsor Teen Advisory Council in an effort to represent the interests of youth and teens in Windsor; and

**WHEREAS,** in May of 2003, the Windsor Town Council changed the name of the Teen Advisory Council to the Teen Advisory Task Force to convene on an "as needed basis" to assist the Town on issues pertaining to the youth population; and

**WHEREAS,** the service strategies and trends in the field of parks and recreation have evolved, the Parks and Recreation Commission approved and recommended to the Town Council the revised roles and responsibilities of the Parks and Recreation Commission on September 9, 2009; and

**WHEREAS,** on February 17, 2010, Council approved the composition of the Parks and Recreation Commission to include two youth representatives to be recruited and recommended by Windsor High School faculty and student body; and

**WHEREAS,** the Town Council rescinded Resolution No. 418-95 and adopted Resolution No. 2656-10 to maintain a Park and Recreation Commission for the purpose of serving in an advisory capacity to the Town Council and to the Parks and Recreation Director to support the Parks and Recreation Department in "Creating Community through People, Parks and Programs" and amending the Commission and terms of appointments as follows:

**Appointment of Commission; Term**
All Commission members must be residents of the Town of Windsor.

The Parks and Recreation Commission is composed of five adult members and two youth members with a junior (11$^{th}$ grade) or senior (12$^{th}$ grade) status at Windsor High School.

Adult Members: Each Councilmember appoints one applicant to the Commission. The Commission member's term of office is concurrent with the appointing Councilmember's term. If there are vacancies prior to the completion of a term, the Councilmember who appointed the individual to the Commission shall appoint another applicant to replace his/her prior appointee.

Youth Members: Each member must be in good academic standing, maintaining at least a 2.5 GPA (C average) and serve on the Commission for a term of one-year commencing in May.

Seat 1: Environmental Studies Core student in the Windsor Institute for Sustainability & the Environment (WISE) Academy - Parks and Recreation Commissioner
   a. Submit an application and cover letter to the assigned WISE Academy teacher advisor in charge of this focus area.
   b. Upon faculty approval, one eligible WISE Academy student shall be elected by WISE Academy students.

Seat 2: Student Council - Parks and Recreation Commissioner
   a. Submit a completed "petition to run for office" through the student government elections process at Windsor High School.
   b. Complete a Teacher Recommendation form to qualify for student body elections.
   c. One eligible student shall be elected by the student body.

Both seats will be appointed by Council by majority vote at their first meeting of May each year. The youth commissioners will hold a non-voting status, serving in an "input only" capacity.

**The Parks and Recreation Commission may endeavor in the following roles and responsibilities for the benefit of the Town of Windsor and its community:**

A. To be available to staff and the Town Council to assist as volunteers in implementing the Parks and Recreation Department goals.

B. Advise Town Council and the Parks and Recreation Director on policies, procedures, rules and regulations relating to the conduct of recreation centers, public parks, trails and facilities, open space, programs and services in the Town, including rates or fees to be charged.

C. Advise on recreation programs, services and special events administered by the Parks and Recreation Department to meet the needs of the community and recommend review by the Town Council as needed.

D. Review, evaluate and recommend to the Town Council park and recreation facility acquisition, development, maintenance and operation methods that are sustainable and energy efficient.

E. Assist in collecting and disseminating information on the parks and recreation facilities and programs available to Windsor residents.

F. Advise and guide civic groups, youth organizations and interested individuals who wish to plan community events or engage in community service projects for the benefit of the Town and the community as staff resources and time permits.

G. Provide assistance and support in the planning and operation of Town-sponsored community events to support economic development and community building.

H. In cooperation with the Parks and Recreation Department make recommendations to Town Council with respect to priorities for expenditures, revenue, grants and cost recovery targets.

I. Review and advise the Town Council and Parks and Recreation Director on the biennial operating and capital improvement plan budgets for the Parks and Recreation Department.

J. Assist and advise Town Council and Parks and Recreation Director in the update, administration and implementation of the Parks and Recreation Master Plan.

K. Provide a forum for residents to express their views related to public parks and recreation facilities, programs and services, and other related issues. Promote interest, cooperation, problem solving and support among public, private and non-profit organizations.

L. Assist in assessing present and future needs of the Town with respect to recreation, music, public art, special events, volunteers, programs, services, parks and facilities as needed.

M. To provide input and advice from a wide and diverse spectrum of youth on issues affecting and concerning the teen population of the Town.

N. To empower the youth of the Town by providing an avenue for their expression and participation in local governance and town development.

O. To provide the general teen population of the Town with a voice in Town government to serve as the means of implementing projects or programs recommended by the teens and approved by the Town Council.

P. Communicate the value of parks and recreation as an essential service by creating community through people, parks and programs.

Q. Town Council may assign other responsibilities or special projects to the Parks and Recreation Commission.

**NOW, THEREFORE BE IT RESOLVED** that the Town Council of the Town of Windsor does hereby resolve as follows:

Section 1:
The following updates are hereby made to the Public Art Advisory Commission:

**Removal of Members**
Five (5) members at large: although a member shall be appointed for a term, they may be

removed at the sole discretion of the Councilmember who made the appointment for any reason or for no reason. A member who fails without permission to attend two (2) successive meetings of the Commission is subject to removal. The seat vacated by the removal of a member shall be filled by appointment by the Councilmember who appointed the member removed.

Youth Members: Although a member shall be appointed for a term, he or she may be recommended for removal at the discretion of the Town Council. A member who fails without permission, to attend two (2) successive meetings of the Commission is subject to removal. Removal is subject to majority vote of the Council. The seat vacated by the removal of a member shall be filled by a Windsor High School teacher advisor.

**Officers of Commission**
Each year the commission or committee shall elect a Chair and Vice Chair, typically the first meeting (regular or special) of the new year. The Chair and Vice Chair are selected by the majority of the commission for a one-year term and shall hold this position until a successor is appointed or until their terms as members of the commission expire. Nominating members for Chair/Vice Chair Commissions is done by formal motions to appoint specific individuals followed by a second and then a vote. Members do not have to be present to be elected Chair/Vice Chair. However, the motion must be made by a member present at the meeting where the action is taking place and approved by the Commission majority present at the meeting.

Members may serve consecutive years. If an officer resigns or is removed before the expired term, a successor shall be selected by the commission at a special or regular meeting. A successor shall act as Chair/Vice Chair for the unexpired term remaining. The Town Manager or their designee shall serve as secretary to the commission. The Secretary shall prepare minutes for the commission's approval and record keeping. A Youth Commissioner is not eligible to serve as a Chair or Vice Chair but may be assigned to lead a specific task or project, as needed.

**Organization and Procedures**
A majority vote of the five at-large Commission members is required to approve recommendations on any matter that is presented to the Commission which requires a vote. A quorum shall consist of the majority of the five (5) occupied Commission member seats. The Commission shall adopt rules and procedures consistent with Town Council norms and regulations.

**Meetings**
Regular meetings are currently held monthly. Regular meetings are held at the time and place as determined by the majority vote of the legislative body.

Special meetings may be held at a different time or place to discuss specific issues as noted on the meeting agenda, as long as the meeting has been properly noticed. Commission/committee majority is required to schedule and hold a special meeting.

**AGENDAS**
Electronic agendas for all commission or committee meetings will be prepared in advance of the meeting. These agendas must be noticed and available to the public and commission 72 hours

before a regular meeting. For special meetings, the advance notice requirement is 24 hours.

**Agenda Packets:**
As part of the Town's climate and environmental goals, agenda packets are distributed to all members in electronic format, detailing the items of business to be discussed and any communications to be presented will be prepared in accordance with the Brown Act and provided to the commissioners within a reasonable amount of time before the meeting. Although an agenda is provided for each meeting, the degree of background material will vary. In order to be prepared for meetings, commissioners are to read these packets when they are distributed electronically and contact the chairperson or the staff liaison if there are any questions regarding information presented in the staff report(s).

**Parks and Recreation Commission Mission**
The Parks and Recreation Commission shall have the duty of serving in an advisory capacity to the Town Council and the Parks and Recreation Director to support the Parks and Recreation Department. Encourage communication and participation between residents and Town government. "Creating Community through People, Parks and Programs" by accomplishing its nine-part mission:

- Strengthen Community Image and Sense of Place
- Support Economic Development
- Strengthen Safety and Security
- Promote Health and Wellness
- Foster Human Development
- Increase Cultural Unity
- Protect Natural and Cultural Resources
- Facilitate Community Problem Solving
- Provide Recreation Experiences:

Section 2: All standing commissions and committees of the Town Council are subject to the principles and guidelines written in the Town Commissioner Handbook.

Section 3: Resolution No. 2656-10 is hereby rescinded.

**PASSED, APPROVED AND ADOPTED this 17th day of January 2023, by the following vote:**

**AYES:**
**NOES:**
**ABSTAIN:**
**ABSENT:**

_____
**ROSA REYNOZA, MAYOR**

**ATTEST:**

_____
**IRENE CAMACHO-WERBY, TOWN CLERK**

**RESOLUTION NO.**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR RESCINDING RESOLUTION NO. 3764-22 AND AMENDING THE ESTABLISHED PUBLIC ART ADVISORY COMMISSION ROLES**

**WHEREAS,** on February 4, 2015, the Windsor Town Council established a Public Art Advisory Committee to provide input to Council and Town staff on public art projects; and

**WHEREAS,** the Town Council of the Town of Windsor wishes to maintain ongoing efforts to provide various forms of art and culture throughout the Windsor community; and

**WHEREAS,** the Town Council subsequently determined to formalize the existing committee as a commission, and on October 5, 2016, adopted Resolution No. 3311-16, establishing the Public Art Advisory Commission (Commission) and its roles and responsibilities; and

**WHEREAS,** the Town Council rescinded Resolution No. 3311-16 and adopted Resolution No. 3511-19 amending the Commission and terms of appointments as follows:

**Appointment of Commission: Term**
Commission members shall be residents of Sonoma County, and are preferred to be residents of the Town of Windsor and shall demonstrate a commitment to art and culture in Windsor.

The Commission shall be composed of seven (7) members, as follows:

Five (5) members at large: Each Councilmember shall appoint one (1) applicant to the Commission. The Commission member's term of office shall be concurrent with the appointing Councilmember's term. If there are vacancies prior to the completion of a term, the Councilmember who appointed the individual to the Commission shall appoint another applicant to replace his/her prior appointee.

One (1) member at-large by simple majority vote: The Town Council shall appoint a current representative from Town Council to serve a one-year term. If there is a vacancy prior to the completion of a term, the Town Council shall appoint another Councilmember to replace the prior Councilmember.

One (1) member at-large by simple majority vote: Parks and Recreation Commission shall recommend, and Council shall appoint a current representative from the Parks and Recreation Commission to serve a one-year term. If there is a vacancy prior to the completion of a term, the Parks and Recreation Commission shall recommend another Parks and Recreation Commissioner to Council for formal appointment to replace the prior Commissioner.

**Roles and Responsibilities of the Commission**

- Review and forward recommendations regarding all works of art acquired by or loaned to the Town, either by purchase, gift, or otherwise, including but not limited to works of art installed in or on all Town-owned buildings that are visible to the public.

- Recommend to the Town Council on all matters pertaining to the quality, quantity, scope, and style of art and culture in public places in the Town of Windsor.

- Provide recognition and increased opportunities for artists through art in public places projects and maintain an inventory of meritorious works of art in the public view.

- Forward recommendations to the Town Council regarding Public Art funds in accordance with established criteria.

- In cooperation with Town staff, forward recommendations to the Town Council with respect to priorities for expenditures, revenue, grants and cost recovery targets and serve as advocates for arts and culture and alternate sources of arts and culture funding, including but not limited to grants, donations and corporate sponsorships.

- Advise the Town Council and Town staff on policies, procedures, rules and regulations relating to the selection, installation, implementation, enhancement, on-going maintenance and management of public art in Windsor.

- Advise on art programs, services and special events administered by the Parks and Recreation Department to meet the needs of the community and recommend review by the Town Council as needed.

- Assist in collecting and disseminating information on the art projects and programs available to Windsor residents and promote greater public participation in and access to the arts.

- Engage, advise and guide civic groups, youth organizations and interested individuals who wish to plan community events in the arts or engage in artistic-based community service projects for the benefit of the Town and the community, as staff resources and time permits.

- Assist and advise the Town Council and Town staff in the update, administration and implementation of the Parks and Recreation Master Plan, the General Plan and other studies as appropriate.

- Provide a forum for residents to express their views related to public art and other related issues. Promote interest, cooperation, problem solving and support among public, private and non-profit organizations.

- Assist in assessing present and future needs of the Town with respect to public art and culture as needed or as requested.

- Be available to the Town Council and Town staff to assist as volunteers in implementing the Parks and Recreation Department and Town-wide goals.

The Town Council or Town staff may assign other responsibilities or special projects to the Public Art Advisory Commission; and

**WHEREAS,** the Town Council rescinded Resolution No. 3511-19 and adopted Resolution No. 3764-22 amending the Commission and terms of appointments to include two (2) Youth Commissioners to serve on the Commission on an annual basis as follows:

Two (2) youth members with a junior (11th grade) or senior (12th grade) status. Youth seats will be appointed by Council majority vote and will hold a non-voting status with an "input only" capacity. Youth members service on the Commission will be for a one-year term commencing in June; and

**WHEREAS,** the Commission shall continue to serve in an advisory capacity to the Town Council in order to establish Windsor as an art destination that raises the potential for education, innovation, collaborative community engagement and cultural exploration.

**NOW, THEREFORE BE IT RESOLVED** that the Town Council of the Town of Windsor does hereby resolve as follows:

Section 1:
The following updates are hereby made to the Public Art Advisory Commission:

**Removal of Members**
Five (5) members at large: although a member shall be appointed for a term, they may be removed at the sole discretion of the Councilmember who made the appointment for any reason or for no reason. A member who fails without permission to attend two (2) successive meetings of the Commission is subject to removal. The seat vacated by the removal of a member shall be filled by appointment by the Councilmember who appointed the member removed.

All other representatives: although a member shall be appointed for a term, he or she may be removed from the Commission for any reason or no reason at the discretion of the Town Council. A member who fails without permission to attend two (2) successive meetings of the Commission is subject to removal. Removal is subject to a simple majority vote of the Council. The seat vacated by the removal of a member shall be filled by Town Council by a simple majority vote.

**Officers of Commission**
Each year the commission or committee shall elect a Chair and Vice Chair, typically the first meeting (regular or special) of the new year. The Chair and Vice Chair are selected by the majority of the commission for a one-year term and shall hold this position until a successor is

appointed or until their terms as members of the commission expire. Nominating members for Chair/Vice Chair Commissions is done by formal motions to appoint specific individuals followed by a second and then a vote. Members do not have to be present to be elected Chair/Vice Chair. However, the motion must be made by a member present at the meeting where the action is taking place and approved by the Commission majority present at the meeting.

Members may serve consecutive years. If an officer resigns or is removed before the expired term, a successor shall be selected by the commission at a special or regular meeting. A successor shall act as Chair/Vice Chair for the unexpired term remaining. The Town Manager or their designee shall serve as secretary to the commission. The Secretary shall prepare minutes for the commission's approval and record keeping. A youth commissioner is not eligible to serve as a Chair or Vice Chair but may be assigned to lead a specific task or project, as needed.

**Organization and Procedures**
A majority vote of the Commission members present is required to approve recommendations on any matter that is presented to the Commission which requires a vote. A quorum shall consist of the majority of the five (5) occupied Commission member seats. The Commission shall adopt rules and procedures consistent with Town Council norms and regulations.

**Meetings**
Regular meetings are currently held monthly. Regular meetings are held at the time and place as determined by the majority vote of the legislative body.

Special meetings may be held at a different time or place to discuss specific issues as noted on the meeting agenda, as long as the meeting has been properly noticed. Commission/committee majority is required to schedule and hold a special meeting.

**AGENDAS**
Electronic agendas for all commission or committee meetings will be prepared in advance of the meeting. These agendas must be noticed and available to the public and commission 72 hours before a regular meeting. For special meetings, the advance notice requirement is 24 hours.

**Agenda Packets:**
As part of the Town's climate and environmental goals, agenda packets are distributed to all members in electronic format, detailing the items of business to be discussed and any communications to be presented will be prepared in accordance with the Brown Act and provided to the commissioners within a reasonable amount of time before the meeting. Although an agenda is provided for each meeting, the degree of background material will vary. In order to be prepared for meetings, commissioners are to read these packets when they are distributed electronically and contact the chairperson or the staff liaison if there are any questions regarding information presented in the staff report(s).

**Public Art Advisory Commission Vision**
The Commission shall serve in an advisory capacity to the Town Council and the Parks and Recreation Director or their designee to support the Town by establishing Windsor as an art destination that raises the potential for education, innovation, collaborative community

engagement and cultural exploration. Encourage communication and participation between residents and Town government.

Section 2: All standing commissions and committees of the Town Council are subject to the principles and guidelines written in the Town Commissioner Handbook.

Section 3: Resolution No. 3764-22 is hereby rescinded.

**PASSED, APPROVED AND ADOPTED this 17th day of January 2023, by the following vote:**

**AYES:**
**NOES:**
**ABSTAIN:**
**ABSENT:**

_____
**ROSA REYNOZA, MAYOR**

**ATTEST:**

_____
**IRENE CAMACHO-WERBY, TOWN CLERK**

**RESOLUTION NO.**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR RESCINDING RESOLUTION NO. 3476-18 AND AMENDING THE ESTABLISHED SENIOR CITIZEN ADVISORY COMMISSION ROLES AND RESPONSIBILITIES OF MEMBERS**

**WHEREAS,** the Senior Center Agreement (Agreement) between the Town of Windsor and Brookscreek Associates was executed on June 1, 1994; and

**WHEREAS,** on September 7, 1994, the Windsor Town Council adopted Resolution No. 362-94 establishing a Senior Citizens Advisory Council to make recommendations concerning the use and governance of the Senior Center and Pool; and

**WHEREAS,** the Windsor Senior Center Declaration of Covenants, Conditions and Restrictions (CC&Rs) for the Brooks Creek Subdivision was executed on January 13, 1995; and

**WHEREAS,** the intent of the Agreement and CC&Rs is to support the Town with the provision of a Senior Center and Pool for the primary purpose of serving the senior citizens of Windsor; and

**WHEREAS,** per the Agreement and CC&Rs the Senior Advisory Committee/Senior Citizen Advisory Council forwards recommendations to Town staff and the Town Council, as appropriate; and

**WHEREAS,** per the Agreement and CC&Rs, terms of office and other rights and responsibilities of the Senior Advisory Committee/Senior Citizen Advisory Council shall be set by Town Council; and

**WHEREAS,** on October 28, 2008, the Senior Citizen Advisory Council recommended that Town Council approve the Senior Center and Pool Use Policy to complement the Agreement and CC&Rs; and

**WHEREAS,** on November 19, 2008, Town Council adopted Resolution No. 2399-08 approving the Windsor Senior Center and Pool Use Policy to: 1) reaffirm existing Senior Center and Pool programs and uses, and enable staff to modify said programs as appropriate; 2) streamline the review and approval process of requests to use the Senior Center and Pool for non-senior use by authorizing staff to review and approve requests for use, subject to the availability; 3) reserve the right of the Senior Citizen Advisory Commission to review and recommend any request to use the Senior Center for non-senior use; and 4) reaffirm that the primary use of the Senior Center and Pool will be for activities and programs which benefit senior residents of the Town of Windsor; and

**WHEREAS,** on October 26, 2010, the Senior Citizen Advisory Council recommended that Town Council approve a name change to the "Senior Citizen Advisory Commission"; and

**WHEREAS,** on November 3, 2010, the Town Council rescinded Resolution No. 362-94 and

amended the established Senior Citizen Advisory Council roles and responsibilities, appointment and removal of members and name change to Senior Citizen Advisory Commission; and

**WHEREAS,** on September 19, 2018, the Town Council adopted Resolution No. 3476-18 and established the commission roles and responsibilities, age requirement, and process for appointment of members as:

The Senior Citizen Advisory Commission shall be composed of eleven (11) members:

Five (5) members at large: each Councilmember shall appoint one (1) applicant to the Commission. The Commission member's term of office is concurrent with the appointing Councilmember's term. If there are vacancies prior to the completion of a term, the Councilmember who appointed the individual to the Commission shall appoint another applicant to replace his/her prior appointee.

Two (2) residents from the Alden Woods and California Creekside Subdivisions (Landmark Neighborhood): by a simple majority vote, Town Council shall appoint Commission members to serve four-year terms, the appointment of which shall be staggered by two years.

One (1) member at-large: by a simple majority vote, Town Council shall appoint a Commission member to serve a four-year term.

Up to three (3) residents from the Brooks Creek Subdivision: by a simple majority vote Town Council shall appoint Commission members to serve a four-year, staggered term. Representation may be reduced or eliminated if the obligations of the imposed assessment of $200 per lot in the Brooks Creek Subdivision, of 200 units ($40,000), go below the following percentages of the total cost to operate the Senior Center and Pool:

| Percentage of Cost | Representation |
|---|---|
| 30% | 2 |
| 20% | 1 |
| 10% | 0 |

If the number of representatives from the Landmark Neighborhood is less than (2) and from the Brooks Creek Subdivision is less than three (3), based on the formula above, Town Council may "back fill" the reduced number of the Landmark Neighborhood and Brooks Creek Subdivision representatives with "at large" appointments by a simple majority vote, to serve a four-year, staggered term(s).

All Commission members must be residents of the Town of Windsor.

The Senior Citizen Advisory Commission shall be comprised of Senior Citizens, defined by Town Council, as permitted in the Agreement and CC&Rs, as a person age 50 or older, and his or her guests, spouses, co-habitants, or persons age 45 or older who are providing primary physical or economic support for such persons; and

**WHEREAS,** The Senior Citizen Advisory Commission may endeavor in the following roles and responsibilities for the benefit of the senior citizens in the Town of Windsor:

A. Advise Town Council and the Parks and Recreation Director on policies, procedures, rules and regulations relating to the operation of the Senior Center and Pool;

B. Advise on recreation programs, other services and special events as identified and approved by the Commission, and administered by the Town to meet the needs of the senior citizen community and recommend review by the Town Council as needed;

C. Engage in studies, research and education as is necessary to assist Town staff and Town Council;

D. Meet and cooperate with other governmental agencies at the Federal, State and County levels also charge with similar functions;

E. Encourage the development of a planned and orderly approach to the delivery of service for seniors within the Town;

F. Promote senior citizen activities and programs offered by the Town;

G. Stimulate business and other segments of the community to become involved in efforts to address senior citizens and needs;

H. Cooperate with existing public and private agencies to develop programs to further the development and increase the public awareness of seniors in the Town of Windsor;

I. In cooperation with Town staff, make recommendations to Town Council with respect to priorities for expenditures, revenue, grants and cost recovery targets;

J. Review and advise the Town Council and Parks and Recreation Director on the biennial operating and capital improvement plan budgets for the Senior Center Division;

K. Provide a forum for senior citizen residents to express their views related to public parks and recreation facilities including the pool, programs and services to meet special physical and social needs of senior citizens and the disabled, and other related issues;

L. Assist in assessing present and future needs of senior citizens with respect to recreation, music, public art, special events, volunteers, programs, services, parks and facilities as needed;

M. Communicate the value of parks and recreation as an essential service by creating community through people, parks and programs;

N. Town Council may assign other responsibilities or special projects to the Senior Citizen Advisory Commission.

**WHEREAS,** following the Town moving into district elections, it is the Town's desire to clarify the general and special rules pertaining to the established commission.

**NOW, THEREFORE BE IT RESOLVED** that the Town Council of the Town of Windsor does hereby resolve as follows:

Section 1:
The following updates are hereby made to the former Senior Citizen Advisory Commission:

**Removal of Members**
Five (5) members at-large: although a member shall be appointed for a term, they may be removed at the sole discretion of the Councilmember who made the appointment for any reason or for no reason. A member who fails without permission to attend two (2) successive meetings of the Commission is subject to removal. The seat vacated by the removal of a member shall be filled by appointment by the Councilmember who appointed the member removed.

All other representatives: although a member shall be appointed for a term, he or she may be removed from the Commission for any reason or no reason at the discretion of the Town Council. A member who fails without permission to attend two (2) successive meetings of the Commission is subject to removal. Removal is subject to a simple majority vote of the Council. The seat vacated by the removal of a member shall be filled by Town Council by a simple majority vote.

**Officers of Commission**
Each year the commission or committee shall elect a Chair and Vice Chair, typically the first meeting (regular or special) of the new year. The Chair and Vice Chair are selected by the majority of the commission for a one-year term and shall hold this position until a successor is appointed or until their terms as members of the commission expire. Nominating members for Chair/Vice Chair Commissions is done by formal motions to appoint specific individuals followed by a second and then a vote. Members do not have to be present to be elected Chair/Vice Chair. However, the motion must be made by a member present at the meeting where the action is taking place and approved by the Commission majority present at the meeting.

Members may serve consecutive years. If an officer resigns or is removed before the expired term, a successor shall be selected by the commission at a special or regular meeting. A successor shall act as Chair/Vice Chair for the unexpired term remaining. The Town Manager or their designee shall serve as secretary to the commission. The Secretary shall prepare minutes for the commission's approval and record keeping.

**Organization and Procedures**
A majority vote of the Commission members present is required to approve recommendations on any matter that is presented to the Commission which requires a vote. A quorum shall consist of the majority of the then occupied Commission member seats. The Commission shall adopt rules and procedures consistent with Town Council norms and regulations.

**Meetings**
Regular meetings are currently held quarterly in January, April, July, and October. The July meeting may be held at the Windsor Senior Center unless otherwise noticed. Regular meetings are held at the time and place as determined by the majority vote of the legislative body.

Special meetings may be held at a different time or place to discuss specific issues as noted on the meeting agenda, as long as the meeting has been properly noticed. Commission/committee majority is required to schedule and hold a special meeting.

**AGENDAS**
Electronic agendas for all commission or committee meetings will be prepared in advance of the meeting. These agendas must be noticed and available to the public and commission 72 hours before a regular meeting. For special meetings, the advance notice requirement is 24 hours.

**Agenda Packets:**
As part of the Town's climate and environmental goals, agenda packets are distributed to all members in electronic format, detailing the items of business to be discussed and any communications to be presented will be prepared in accordance with the Brown Act and provided to the commissioners within a reasonable amount of time before the meeting. Although an agenda is provided for each meeting, the degree of background material will vary. In order to be prepared for meetings, commissioners are to read these packets when they are distributed electronically and contact the chairperson or the staff liaison if there are any questions regarding information presented in the staff report(s).

**The Senior Citizen Advisory Commission Mission:**
The Senior Citizen Advisory Commission shall have the duty of serving in an advisory capacity to the Town Council to support the recreation programs and other services, as identified and approved by the Commission, and offered to senior citizens and persons with disabilities. Encourage communication and participation between residents and Town government.

Section 2: All standing commissions and committees of the Town Council are subject to the principles and guidelines written in the Town Commissioner Handbook.

Section 3: Resolution No. 3476-18 is hereby rescinded.

**PASSED, APPROVED AND ADOPTED this 17th day of January 2023, by the following vote:**

**AYES:**
**NOES:**
**ABSTAIN:**
**ABSENT:**

_____
**ROSA REYNOZA, MAYOR**

**ATTEST:**

_____
**IRENE CAMACHO-WERBY, TOWN CLERK**

**RESOLUTION NO. 3778-22**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR ESTABLISHING A CODE OF ETHICS AND CONDUCT FOR ELECTED AND APPOINTED OFFICIALS**

**WHEREAS,** the proper operation of democratic government requires that decision-makers be accountable, independent, impartial and fair in their actions to the people they serve; and

**WHEREAS,** public officials, both elected and appointed, must act with integrity, both professionally; and

**WHEREAS,** the Town of Windsor seeks to promote and maintain the highest standards of personal and professional conduct in the Town's government; and

**WHEREAS,** the Town will benefit by having all elected and appointed officials subscribe to ethical values and take the time to understand how they apply to their responsibilities; and

**WHEREAS,** the Town seeks public confidence in the Town's services and trust of its decision-makers and accordingly has determined that the conduct and decisions made by our elected and appointed officials must meet the most demanding ethical standards and demonstrate the highest levels of achievement.

**NOW, THEREFORE BE IT RESOLVED** that the Town Council of the Town of Windsor does hereby adopt the attached Code of Ethics and Conduct; and directs the Town Clerk to post the Code on the Town website and distribute copies to Town Council and all Town Boards and Commissions.

**PASSED, APPROVED, AND ADOPTED this 3rd day of August 2022, by the following vote:**

| | |
|---|---|
| **AYES:** | **COUNCILMEMBERS FUDGE, REYNOZA, WALL, VICE MAYOR LEMUS AND MAYOR SALMON** |
| **NOES:** | **NONE** |
| **ABSTAIN:** | **NONE** |
| **ABSENT:** | **NONE** |

**SAM SALMON, MAYOR**

**ATTEST:**

**IRENE CAMACHO-WERBY, TOWN CLERK**

**Attachment:**

- **Exhibit A** – Code of Ethics and Conduct

# Code of Ethics and Conduct

The citizens and businesses of Windsor are entitled to a fair, ethical and accountable local government. This Code of Ethics and Conduct for elected and appointed officials serves as a guide for Members of the Town Council and of the Town's Boards and Commissions to help assure the integrity of local government and its effective and fair operation. In short, this Code of Ethics and Conduct provides guidance on ethical issues and questions of right and wrong.

The effective functioning of democratic government requires that:

- public officials, both elected and appointed, comply with the letter and spirit of the laws and policies affecting the operations of government;
- public office be used for the public good, not for personal gain;
- public officials be accountable, independent, impartial and fair in their actions;
- public officials act with integrity both professionally and personally;
- public deliberations and processes be conducted openly, in a transparent manner, unless legally confidential, in an atmosphere of respect and civility.

Here are the ethical values and corresponding examples of ethical conduct that the Town Council and Town Boards and Commissions must adhere to:

| **Ethical Value** | **Example Statement of Ethical Conduct** |
|---|---|
| Always comply with the law. | Members shall comply with the laws of the nation, the State of California and the Town of Windsor in the performance of their public duties. |
| Do not use position for personal gain. | Members shall not use their official positions to influence government decisions in which they have a material financial interest, or when they have an organizational responsibility or personal relationship in which the member stands to gain personally from influencing a decision. |
| Accountable for actions. | Members entering office shall sign a statement affirming they have read and understand the Ethics Code. Members shall intervene when the actions of a Member appear to be in violation of the Ethics Code when brought to their attention. |
| Act in public interest. | Members will work for the common good of the people of the Town of Windsor and not for any private or personal interest. |
| Act with integrity. | The professional and personal conduct of Members must be above reproach and avoid the appearance of impropriety. |
| Act with transparency. | Members shall publicly share substantive information that is relevant to a matter under consideration by the Council or Boards and Commissions, which they may have received from sources outside of the public decision-making process. |

**Ethics Training and Model of Excellence Statement**

Town Councilmembers and appointed Board Members and Commissioners must undergo annual ethics training and sign the Model of Excellence Statement. Members who are out of compliance on ethics training or who do not sign the Model of Excellence Statement will not be eligible for intergovernmental assignments and may face sanctions under this Code.

**Procedure for Addressing Misconduct**

For ease of reference in the Code of Ethics and Conduct, the term "Member" refers to any Member of the Town of Windsor Council or the Town's appointed Boards and Commissions.

Members are responsible for adhering to the ethical values and standards in this Code of Ethics and Conduct. Any Member may intervene when they learn of actions by Members that may have violated this Code of Ethics and Conduct.

Members should point out to the offending Member what infractions of the Code of Ethics and Conduct he or she may have committed. If the offenses continue, then the matter should be referred to the Town Manager and Town Attorney. If the alleged infractions are serious, the Town Manager and Town Attorney may discuss with Council possible avenues of action, including addressing the alleged violations in a public meeting, which may include considering sanctions under this Code of Ethics and Conduct.

**Sanctions**

This Code of Ethics and Conduct is not meant to address violations that are criminal in nature or those that break laws. Law enforcement would be the responding authority for criminal activity and the County, State Departments or Commissions (such as the California Fair Political Practices Commission) or State Attorney General's office and/or law enforcement may be the appropriate responding authority for certain legal violations.

However, the Town Council does have the power to impose sanctions when a Councilmember or appointed Board Member and Commissioner violates this Code of Ethics and Conduct. And, while the Town Council does not have the legal authority to remove an elected Councilmember from office, it does have the legal authority to remove an appointed official, such as a Council appointed Board Member or Commissioner, from office.

Sanctions the Town Council may impose for violations of the Code of Ethics and Conduct:

- Admonition,
- Formal censure,
- Removal from certain assignments or appointments (both internal and intergovernmental),
- Restriction of official travel,
- Serious infractions could lead to other sanctions as deemed appropriate by Council, such as referral to the District Attorney's office for possible consideration by the Grand Jury (which could lead to removal from office)

*Removal from Office -- Appointed Officials*
As noted above, the Town Council has the authority to remove Council-appointed Board Members and Commissioners from their respective commissions if they violate the Code of Ethics and Conduct. Board Members and Commissioners would also be subject to the sanctions above.

**Implementation**

This Code of Ethics and Conduct is intended to be self-enforcing. It therefore becomes most effective when Members are thoroughly familiar with it and embrace its provisions. For this reason, this Code shall be included in the regular orientations for candidates for Town Council, applicants to Boards and Commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they read and understood the Town of Windsor Code of Ethics and Conduct. This statement shall be referred to as a "Model of Excellence Statement." In addition, the Code of Ethics and Conduct shall be annually reviewed by the Town Council and the Town Council shall consider recommendations to update it as necessary.

## MODEL OF EXCELLENCE

Windsor Town Council and Appointed Board and Commissions

## MEMBER STATEMENT

As a Member of the Windsor Town Council or a Windsor Board or Commission, I agree to uphold the Code of Ethics and Conduct for elected and appointed officials adopted by the Town and conduct myself by the following model of excellence. I will:

- Recognize the worth of individual members and appreciate their individual talents, perspectives and contributions;
- Help create an atmosphere of respect and civility where individual members, Town staff and the public are free to express their ideas and work to their full potential;
- Conduct my personal and public affairs with honesty, integrity, fairness and respect for others;
- Respect the dignity and privacy of individuals and organizations;
- Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit;
- Avoid and discourage conduct which is divisive or harmful to the best interests of Windsor; and
- Treat all people with whom I come in contact in the way I wish to be treated.

***I affirm that I have read and understood the Town of Windsor Code of Ethics and Conduct for Elected and Appointed Officials.***

_____ _____

Signature Date

_____

Name

# Open & Public V

## A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016




LEAGUE® OF CALIFORNIA CITIES

## ACKNOWLEDGEMENTS

The League thanks the following individuals for their work on this publication:

**Brown Act Committee**

Michael Jenkins, Committee Chair
City Attorney, Hermosa Beach, Rolling Hills and West Hollywood

Michael W. Barrett
*City Attorney, Napa*

Damien Brower
*City Attorney, Brentwood*

Ariel Pierre Calonne
*City Attorney, Santa Barbara*

Veronica Ramirez
*Assistant City Attorney, Redwood City*

Malathy Subramanian
*City Attorney, Clayton and Lafayette*

Paul Zarefsky
*Deputy City Attorney, San Francisco*

Gregory W. Stepanicich
*1st Vice President, City Attorneys' Department*
*City Attorney Fairfield, Mill Valley, Town of Ross*

**League Staff**

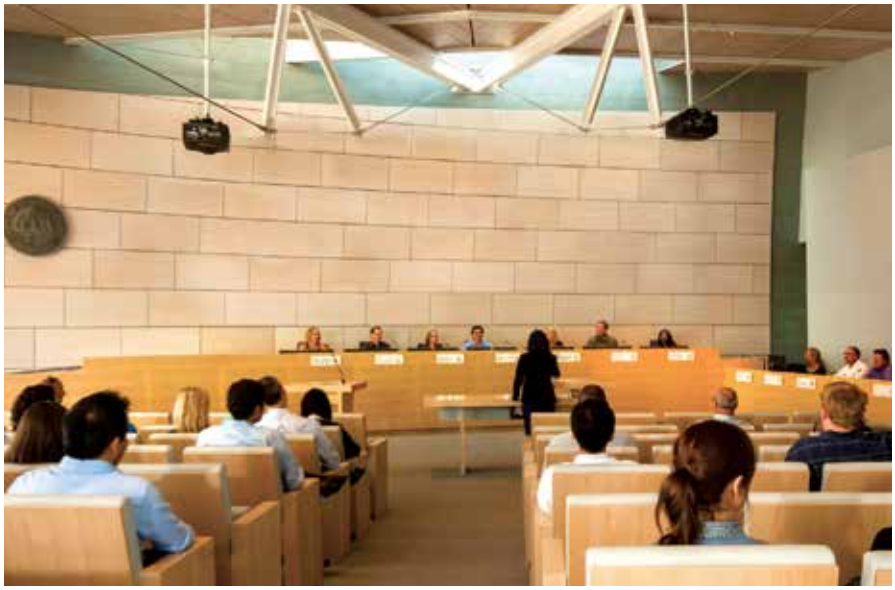
Patrick Whitnell, *General Counsel*

Koreen Kelleher, *Assistant General Counsel*

Corrie Manning, *Senior Deputy General Counsel*

Alison Leary, *Deputy General Counsel*

Janet Leonard, *Legal Assistant*



# Open & Public V

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# Chapter 1

## IT IS THE PEOPLE'S BUSINESS


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# Chapter 1

## IT IS THE PEOPLE'S BUSINESS



### The right of access

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

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

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

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

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

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

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

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

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

### Broad coverage

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

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

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

## Narrow exemptions

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

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

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

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

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

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

## Public participation in meetings

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

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

## Controversy

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

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

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

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

## Beyond the law — good business practices

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



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

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

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

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

## Achieving balance

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

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

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

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

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

## Historical note

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

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

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

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

## ENDNOTES:

1 California Government Code section 54950

2 California Constitution, Art. 1, section 3(b)(1)

3 California Government Code section 54953(a)

4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).

5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533

6 California Government Code section 54953.7

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# Chapter 2

## LEGISLATIVE BODIES

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

# Chapter 2

## LEGISLATIVE BODIES

*The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.*[1]



### What is a "legislative body" of a local agency?

A "legislative body" includes:

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

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

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

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

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

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11]
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[12] These include some nonprofit corporations created by local agencies.[13] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[14] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[15]

**Q:** The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

**A:** *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

**Q:** If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

**A:** *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

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

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[16]

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

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[17] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[18]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[19]

  **Q.** A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

  **A.** *No, because the committee has not been established by formal action of the legislative body.*

  **Q.** During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

  **A.** *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.[20]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[21]
- County central committees of political parties are also not Brown Act bodies.[22]

**ENDNOTES:**

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127

2 California Government Code section 54952(a) and (b)

3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550

5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)

6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362

7 California Government Code section 54952.1

8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805

9 California Government Code section 54952(b)

10 79 Ops.Cal.Atty.Gen. 69 (1996)

11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793

12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)

13 California Government Code section 54952(c)(1)(A); International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287, 300; Epstein v. Hollywood Entertainment Dist. II Business Improvement District (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)

14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App.4th 287, 300 fn. 5

15 "*The Brown Act, Open Meetings for Local Legislative Bodies,*" California Attorney General's Office (2003), p. 7

16 California Government Code section 54952(d)

17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129

19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)

20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879

21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513

22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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# Chapter 3

## MEETINGS


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# Chapter 3

## MEETINGS



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

### Brown Act meetings

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

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

### Six exceptions to the meeting definition

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

#### *Individual Contacts*

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

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

### *Conferences*



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

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

### *Community Meetings*

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

> **"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**
>
> *The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

**Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

**A.** *Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.*



### *Other Legislative Bodies*

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

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

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

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

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

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

### *Standing Committees*

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

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

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

### *Social or Ceremonial Events*

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

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

### *Grand Jury Testimony*

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

## Collective briefings

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



## Retreats or workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.[11]

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

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

## Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting … use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."[12] The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a "daisy chain" or a "hub and spoke" sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body's subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one-by-one for for discussion, deliberation, or a decision on a proposed action.[13] Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.



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

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

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

> **The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"**
>
> **"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"**
>
> **"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."**
>
> **Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"**

*Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating*

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

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

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

> **"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."**
>
> **"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"**
>
> **"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."**

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

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

**Q.** The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

**A.** *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*

**Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?

**A.** *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply to all" button that may inadvertently result in a Brown Act violation.

## Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[19] A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

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

*A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.*

**Q.** The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?

**A.** *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*



## Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[20] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either

audio or video, or both."[21] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[22]

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

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

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

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

## Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[23]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[24]

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

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

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

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.[25]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[26] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.



Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[27]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[28]

## Endnotes:

1 California Government Code section 54952.2(a)

2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870

3 California Government Code section 54954(a)

4 California Government Code section 54956

5 California Government Code section 54956.5

6 California Government Code section 54955

7 California Government Code section 54952.2(c)

8 California Government Code section 54952.2(c)(4)

9 California Government Code section 54952.2(c)(6)

10 California Government Code section 54953.1

11 "*The Brown Act,*" California Attorney General (2003), p. 10

12 California Government Code section 54952.2(b)(1)

13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95

14 California Government Code section 54952.2(b)(2)

15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518

16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

17 California Government Code section 54957.5(a)

18 California Government Code section 54952.2(b)(2)

19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)

20 California Government Code section 54953(b)(1)

21 California Government Code section 54953(b)(4)

22 California Government Code section 54953

23 California Government Code section 54954(b)

24 California Government Code section 54954(b)(1)-(7)

25 94 Ops.Cal.Atty.Gen. 15 (2011)

26 California Government Code section 54954(c)

27 California Government Code section 54954(d)

28 California Government Code section 54954(e)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.




# Chapter 4

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# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



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

### Agendas for regular meetings

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

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

**Q.** May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city's website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

**A.** *At a minimum, the Brown Act calls for "substantial compliance" with all agenda posting requirements, including posting to the agency website.[5] Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.[6] This inquiry requires a fact-specific examination of whether the agency or its legislative body made "reasonably effective efforts to notify interested persons of a public meeting" through online posting and other available means.[7] The Attorney General's opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

*awareness, among other factors.[8] The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.*

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."[9] Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.[10]

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

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

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

Are these descriptions adequate?

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

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

Is this permissible?

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

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




## Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[11]

## Notice requirements for special meetings

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




The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[12]

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

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[13] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[14] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[15]

## Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[16] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

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

## Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[17]

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

## Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[18] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[19] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and to address the board on those items.[20]

## Notice requirements for tax or assessment meetings and hearings




The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[21] Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[22] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

## Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[23]

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

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

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

> **"I'd like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.**
>
> **"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"**

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

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

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

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

## Responding to the public

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

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.[24] However, caution should be used to avoid any discussion or action on such items.



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

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

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

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

## The right to attend and observe meetings

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

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[25]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[26] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[27]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[28]

Action by secret ballot, whether preliminary or final, is flatly prohibited.[29]

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[30]

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

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

The legislative body may remove persons from a meeting who willfully interrupt proceedings.[31] Ejection is justified only when audience members actually disrupt the proceedings.[32] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.[33]



## Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[34] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[35]

**Q:** In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

**A:** *No. The memorandum is a privileged attorney-client communication.*

**Q:** In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

**A.** *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.[36] A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.[37]



Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[38] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[39]

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[40]

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[41]

## The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[42]

**Q.** Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

**A.** *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.[43]

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

**Q.** May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

**A.** *No, as long as the criticism pertains to job performance.*

**Q.** During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

**A.** *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*



The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[44]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.[45]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[46]

## Endnotes:

1 California Government Code section 54954.2(a)(1)

2 78 Ops.Cal.Atty.Gen. 327 (1995)

3 88 Ops.Cal.Atty.Gen. 218 (2005)

4 California Government Code sections 54954.2(a)(1) and 54954.2(d)

5 California Government Code section 54960.1(d)(1)

6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262

7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432

8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8

9 California Government Code section 54954.2(a)(1)

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

11 California Government Code section 54954.1

12 California Government Code sections 54956(a) and (c)

13 California Government Code section 54955

14 California Government Code section 54954.2(b)(3)

15 California Government Code section 54955.1

16 California Government Code section 54956.5

17 California Government Code section 54952.3

18 Education Code sections 35144, 35145 and 72129

19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196

20 California Education Code section 35145.5

21 California Government Code section 54954.6

22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)

23 California Government Code section 54954.2(b)

24 California Government Code section 54954.2(a)(2)

25 California Government Code section 54953.3

26 California Government Code section 54961(a); California Government Code section 11135(a)

27 California Government Code section 54952.2(c)(2)

28 California Government Code section 54953(b)

29 California Government Code section 54953(c)

30 California Government Code section 54953(c)(2)

31 California Government Code section 54957.9.

32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption).

33 California Government Code section 54957.9

34 California Government Code section 54957.5

35 California Government Code section 54957.5(d)

36 California Government Code section 54957.5(b)

37 California Government Code section 54957.5(c)

38 California Government Code section 54953.5(b)

39 California Government Code section 54957.5(d)

40 California Government Code section 54953.5(a)

41 California Government Code section 54953.6

42 California Government Code section 54954.3(a)

43 California Government Code section 54954.3(c)

44 California Government Code section 54954.3(b); Chaffee v. San Francisco Public Library Com. (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)

45 California Government Code section 54954.3(a)

46 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.



# Chapter 5

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# Chapter 5

## CLOSED SESSIONS

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



As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

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

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

### Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a "safe harbor" from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

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

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

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

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

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

## Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.[13]

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

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

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

### *Existing litigation*

**Q.** May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?

**A.** *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[19]



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

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[20] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

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

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

Certain actions must be reported in open session at the same meeting following the closed

session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[21] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.



## Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[22] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[23]

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

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

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern[24] and the names of the parties with whom its negotiator may negotiate.[25]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.[26]

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

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

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

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

## Public employment

The Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."[27] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[28] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[29] That authority may be delegated to a subsidiary appointed body.[30]

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

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[31] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[32] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[33] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[34]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[35]

**Q.** Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

**A.** *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[36] An incorrect agenda description can result in invalidation of an action and much embarrassment.

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[37] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

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

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

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

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[38] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[39]

> **"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."**
>
> **"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**
>
> *This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

## Labor negotiations

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

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[40] on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[41]

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

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

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[42]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[43] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

## Labor negotiations — school and community college districts

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

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[44]

Public participation under the Rodda Act also takes another form.[45] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[46] The final vote must be in public.

## Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[47]

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[48] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[49]

**PRACTICE TIP:** Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

## Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[50]

## License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[51]

## Public security



Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[52] Action taken in closed session with respect to such public security issues is not reportable action.

## Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[53]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[54]

## Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.[55]

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information which is not generally known to the public or competitors and which: 1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[56]



## Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,[57] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[58] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[59] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[60] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[61]

**PRACTICE TIP:** Meetings are either open or closed. There is nothing "in between."[62]

## Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.[63]

**Q.** May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

**A.** *No, attendance in closed sessions is reserved exclusively for the agency's advisors.*

## The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[64] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[65] Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.[66]

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information received during a closed session regarding pending litigation,[67] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[68] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.[69]

**PRACTICE TIP:** There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.[70]

The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.[71] The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

**ENDNOTES:**

1 California Government Code section 54962

2 California Constitution, Art. 1, section 3

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).

4 California Government Code section 54957.1

5 California Government Code section 54954.5

6 California Government Code section 54954.2

7 California Government Code section 54954.5

8 California Government Code sections 54956.9 and 54957.7

9 California Government Code section 54957.1(a)

10 California Government Code section 54957.1(b)

11 California Government Code section 54957.2

12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707

13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).

15 82 Ops.Cal.Atty.Gen. 29 (1999)

16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471

17 "*The Brown Act,*" California Attorney General (2003), p. 40

18 California Government Code section 54956.9(g)

19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172

20 Government Code section 54956.9(e)

21 California Government Code section 54957.1

22 California Government Code section 54956.8

23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan Incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).

24 73 Ops.Cal.Atty.Gen. 1 (1990)

25 California Government Code sections 54956.8 and 54954.5(b)

26 California Government Code section 54957.1(a)(1)

27 California Government Code section 54957(b)

28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)

30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

31 California Government Code section 54957(b)(3)

32 88 Ops.Cal.Atty.Gen. 16 (2005)

33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860

34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).

35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87

36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17

37 California Government Code section 54957

38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165

39 California Government Code section 54957.1(a)(5)

40 California Government Code section 54957.6

41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not "employees" of the district).

42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)

43 California Government Code section 54957.1(a)(6)

44 California Government Code section 3549.1

45 California Government Code section 3540

46 California Government Code section 3547

47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

48 California Education Code section 72122

49 California Education Code section 60617

50 California Government Code section 54956.96

51 California Government Code section 54956.7

52 California Government Code section 54957

53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354

54 California Government Code section 54957.8

55 California Government Code section 54962

56 California Health and Safety Code section 32106

57 California Government Code section 54956.75

58 California Government Code section 54956.81

59 California Government Code section 54956.86

60 California Government Code section 54956.87

61 California Government Code section 54956.95

62 46 Ops.Cal.Atty.Gen. 34 (1965)

63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.

66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

67 80 Ops.Cal.Atty.Gen. 231 (1997)

68 76 Ops.Cal.Atty.Gen. 289 (1993)

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

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# Chapter 6

## REMEDIES


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# Chapter 6

## REMEDIES



Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

### Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.[1] Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;[2]
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendized items are acted on by the governing body during a meeting.[3] The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,[4] the challenger must show prejudice as a result of the alleged violation.[5] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[6]

## Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.[7] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body, clearly describing the past action and the nature of the alleged violation.[8] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[9] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.[10]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[11] The unconditional commitment must be substantially in the form set forth in the Brown Act.[12] No legal action may thereafter be commenced regarding the past action.[13] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[14]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[15]

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

## Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.



It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[16] Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.[17]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

## Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[18] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[19]

**PRACTICE TIP:** Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

## Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.[20]

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.[21]

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[22] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[23] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[24]

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[25] There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[26]

## Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.



### ENDNOTES:

1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198

3 California Government Code section 54960.1 (b) and (c)(1)

4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319

5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561

6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118

7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)

8 Government Code Sections 54960.2(a)(1), (2)

9 Government Code Section 54960.2(b)

10 Government Code Section 54960.2(a)(4)

11 Government Code Section 54960.2(c)(2)

12 Government Code Section 54960.2(c)(1)

13 Government Code Section 54960.2(c)(3)

14 Government Code Section 54960.2(d)

15 Government Code Section 54960.2(e)

16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6

17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36

18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein

19 California Government Code section 54960.5

20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

21 California Government Code section 54959

22 California Government Code section 54952.6

23 61 Ops.Cal.Atty.Gen.283 (1978)

24 California Government Code section 54959

25 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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