

CITY OF SAN LEANDRO



HANDBOOK FOR BOARDS AND COMMISSIONS

PROVIDED BY THE CITY CLERK'S OFFICE



Welcome!

Congratulations on your commitment of service to the San Leandro community!

We appreciate your willingness to serve in this critical role of advising the City Council on important issues. You are not alone in this incredible endeavor and will be assisted by highly skilled and professional staff who will provide valuable information to help you in your decision-making.

This handbook is intended to help you understand your new role as a Board or Commission Member in the City of San Leandro. Your Board or Commission Secretary will contact you to schedule an orientation to review the applicable policies and procedures, and your duties.

TABLE OF CONTENTS

| | |
|--|----|
| City Council Overview | 1 |
| Current Boards and Commissions Roster | 1 |
| The Brown Act..... | 2 |
| <i>Meetings</i> | 2 |
| <i>Notices and Agendas</i> | 3 |
| <i>Public Participation</i> | 4 |
| Roles and Responsibilities..... | 5 |
| <i>Officers</i> | 5 |
| <i>Conduct of Business</i> | 6 |
| Conflicts of Interests | 9 |
| <i>Political Reform Act</i> | 9 |
| <i>Statement of Economic Interest (Form 700)</i> | 10 |

APPENDICES

| | |
|------------|------------------------------------|
| APPENDIX A | Helpful Phone Numbers |
| APPENDIX B | Parliamentary Procedures Condensed |
| APPENDIX C | Parliamentary Amendment Process |
| APPENDIX D | Parliamentary Words and Terms |
| APPENDIX E | Guide to the Ralph M. Brown Act |

CITY COUNCIL OVERVIEW

The City Council is the governing body with the authority to adopt and enforce municipal laws and regulations. The City Council includes six (6) Councilmembers and a Mayor. Councilmembers are nominated by geographical district and elected at-large. The Mayor is nominated and elected at-large. The Mayor and Councilmembers may serve a maximum of two (2) consecutive four (4)-year terms.

The City Council appoints the City Manager, who acts as the City's Chief Administrative Officer. The City Manager is responsible to the City Council for all City operations. The City Council also appoints the City Attorney, who acts as the City's Chief Legal Officer.

The City Council also reviews proposals for community services; approves new programs and provides for the necessary financing; and approves and modifies the budget as prepared by the City Manager. In addition, the City Council appoints and can remove persons filling Board and Commission positions. Most Board and Commission Members are nominated by district and approved by the entire City Council.

CURRENT BOARD AND COMMISSION ROSTER

The following ten (10) Boards and Commissions have been established by charter or by ordinance:

- Arts Commission (Ordinance No. 2014-015)
- Board of Zoning Adjustments (Charter)
- Human Resources Commission (Charter)
- Library-Historical Commission (Charter) (Combined Library Board and Historical-Cultural Commission)
- Personnel Relations Board (Charter)
- Planning Commission (Charter)
- Recreation and Parks Commission (Charter)
- Rent Review Board (Ordinance No. 2001-09)
- Senior Commission (Ordinance No. 2001-023)
- Youth Advisory Commission (Ordinance No. 95-017)

The City Clerk's Office maintains the roster of the above Boards and Commissions, which is commonly referred to as the "Official Family List." This list is a public document and is posted on the City's website.

The Board/Commission Secretary maintains the membership information on the webpages.

The City Clerk's Office also facilitates the appointment process for vacancies. Applications can be obtained from and are filed with the City Clerk. There is an official process by which vacancies are filled. Questions regarding that process should be referred to the City Clerk's Office at (510) 577-3367.

THE BROWN ACT - *Meetings*

Most of the City's Boards and Commissions are required to conduct their meetings in public. With very few exceptions you are required by law to observe the open meeting law called the Ralph M. Brown Act, codified in California Government Code Sections 54950, *et seq.* Since most of your work as a Board/Commission Member will take place in public meetings, it is important that you understand public meeting laws. The Brown Act regulates the conduct of meetings in California with the intent to *"declare that public commissions, boards and councils and 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."*

What is a Meeting?

A meeting includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any matter which is under the subject matter jurisdiction of the agency. It is important to understand these laws to help you better understand your responsibilities and prepare for meetings.

Regular Meetings

Regular meetings are held on an established time and place each month. When the day or the day following the day fixed for a regular meeting falls on a legal holiday, the meetings will be held at a time as agreed upon by the Board/Commission.

Special Meetings

The presiding officer or a majority of the public body may call special meetings when necessary. Written notice of the special meeting must be provided at least 24 hours before the meeting. Notices should include the time, place, and subject matter to be discussed at the special meeting. No other business shall be considered at such special meeting.

EXAMPLE:

XYZ Commission meets on the first Monday of each month at the Main Library at 7 PM (Regular Meeting)

The annual Art Exhibit is scheduled and the Commission needs to approve vendor contract prior to the exhibit. The next regular meeting is after the exhibit so the chair calls a meeting to approve the contracts only. (Special Meeting)

THE BROWN ACT - *Notices and Agendas*

Meeting Notices

The Brown Act requires all meetings to be noticed in a designated time frame. In order to meet proper noticing, meeting agendas must be posted and properly distributed prior to the meeting. In San Leandro, meetings posted in front of City Hall, and on the City's website. Full agenda agendas, including all back up reports and materials, are available on the City's website.

Regular Meetings

Agendas for regular meetings must be noticed at least 72 hours before the meeting in a location that is freely accessible to the public 24 hours a day.

Special Meetings

Agendas for special meetings must be posted at least 24 hours before the meeting in a location that is freely accessible to the public 24 hours a day.

Agendas and Agenda Materials

Meeting agendas specify the date, time, and location of the meeting and give a general description of items to be discussed. This is helpful to the Board/Commission Members and members of the public. **If an item is not on the agenda, there can be no discussion or action on that item.**

Agendas typically include reports, legislation, and any background information pertinent to the subject matter of an agenda item. As a Board/Commission Member it is important that you read all of your agenda materials prior to the meeting.

A designated professional staff person acting as Secretary shall prepare an agenda for all matters to be submitted to the Members and shall distribute the agenda and related materials to all interested parties not less than four (4) days prior to the date of such regular meeting.



THE BROWN ACT - *Public Participation*

Interactions with the Public

The Brown Act governs requirements for ensuring public meetings are open and available to members of the public. Your responsibility as a Board/Commission Member extends beyond compliance with the law. As a Member, you are expected to treat people fairly and with courtesy, and be open-minded in all deliberations and consider all opinions before making a decision.

Conditions on Public Comments

A body can request members of the public provide their names on a speaker card; however members of the public cannot be required to provide their names as a condition to attend or participate in a public meeting.



Right to Public Comment

Every agenda must afford members of the public the opportunity to speak on an agenda item before the legislative body takes action on the item. The legislative body may enact regulations to assist in processing comments from the public. These regulations may establish procedures for public comment as well as specifying reasonable time limitations on speakers, but cannot prohibit public criticism.

Addressing Boards and Commissions

All remarks shall be addressed to the membership as a body and not to any individual member. No person, other than Members and the person having the floor, shall be permitted to enter into any discussion, either directly or through a Member, except through the Chair.

Meeting Accessibility

Meetings must be accessible to all persons including those with physical disabilities.

ROLES AND RESPONSIBILITIES - *Officers*

Board/Commission Members serve a vital role in city government by gathering and analyzing public input and making recommendations to the City Council. The guiding principle of any Board/Commission recommendation is that of addressing the overall public benefit. Members are responsible for reviewing meeting materials in advance, attending all meetings, and notifying the Chair and the Secretary if they cannot attend a meeting or will be late to a meeting.

Chair

The presiding officer of the Board/Commission is the Chair and will be elected on an annual basis in July, except for the Youth Advisory Commission Chair who shall be elected in November. The Chair must preside over all regular and special meetings. The Chair will preserve decorum and order of meetings, announce decisions, decide all questions of order, and must vote on all questions.

Vice Chair

The Vice Chair is elected annually and serves as presiding officer, in the absence of the Chair or upon request of the Chair. The Vice Chair will be elected in July, except for the Youth Advisory Commission Vice Chair who shall be elected in November.

Term Limit

No member can serve more than one successive full term of one (1) year as Chair provided that this limitation may be waived upon a finding of good cause, by an affirmative vote of a majority of the members.

Secretary

The Secretary will keep all minutes, prepare the agenda, and furnish all Members with a copy of the agenda, plus copies of all correspondence and other papers relating to items appearing on the agenda. Items, which are of general interest, not requiring action on the part of the Board/Commission need not be included in the agenda, but may be mailed to all Members of the Board/Commission.

ROLES AND RESPONSIBILITIES - *Conduct Of Business*

Citizen Boards and Commissions are an important part of the democratic process. They enable citizens to have a voice on issues early in the decision cycle, providing them an opportunity to give advice and recommendations to the elected officials. Although the City Council, not the Board/Commission, is ultimately responsible to community residents, the **advisory role** of Boards/Commissions is important to the well-being of the community.

Boards and Commissions are generally formed to:

- deal with issues too new for standard avenues of participation
- satisfy requirements of state law (i.e., Planning Commission and Board of Zoning Adjustments)
- generate ideas
- encourage broader participation
- encourage discussion

Oath of Office

Members may not participate or vote on matters before their appointed Board/Commission until the Oath of Office has been fully executed before an authorized City representative. This typically occurs during the City Council meeting when the resolution confirming appointment takes place. The City Clerk's Office will notify you upon approval of your appointment and invite you to the next City Council meeting to take the Oath.

Incompatible Offices

State law provides statutory provision that prohibits board or commission members from holding "incompatible offices".¹ This doctrine restricts the ability of public officials to hold two different public offices simultaneously if the offices have overlapping and conflicting public duties.

A person may not simultaneously hold two public offices if:

**Either of the offices exercises a supervisory, auditing or removal power over the other office or body;
There is a significant clash of duties or loyalties between the two offices; or
There are public policy considerations that make it improper.**

Attendance

Your Board/Commission needs you to be present and actively participate. If you will miss a meeting, please inform the Chair and the Secretary with as much advance notice as possible. Please note that regular attendance is expected and a 75% attendance level is required. Failure to meet this requirement could result in removal; and failure to attend three (3) consecutive regular meetings will be cause for Council declaring the position vacant.

Rules

Robert's Rules of Order, Newly Revised, will govern the conduct of all meetings except where inconsistent with the express provisions of law or the Rules of Operation or other resolutions of the Boards/Commissions.

¹ CA Gov Code Section 1099

Below is an abbreviated summary of some of Robert's most important Rules.

Motions

A motion is a proposal recognized by the presiding officer. It can be changed (amended) or withdrawn before being voted on. Here are the usual steps to follow in making and voting on a motion.

1. A Member is recognized and states a motion;
2. Another Member seconds the motion;
3. Members discuss the motion;
4. The Chair or presiding officer calls for a vote; and,
5. The Chair or presiding officer announces the result of the vote
 - a. The motion will either carry or fail



A member may amend a motion after it has been made but before it has been voted upon. It is important to remember that a pending motion may only be amended by adding or deleting words or phrases; you cannot use the amendment procedure to substitute a new or different motion in its place. Once an amendment is proposed or seconded, a vote is taken on whether to accept the amendment before voting on the underlying motion.

Voting

Votes can be taken in the following ways:

1. Voice – The chair asks those in favor to say, “aye” and those opposed to say “no”.
2. Roll Call or Ballot – Each member responds “yes” or “no” as the vote is taken.
3. Unanimous Consent – When a motion is unopposed, the Chair can say, “If there is no objection...” The membership can show agreement by its silence, however if any member objects, then the item must be put to a vote.

Order of Business

Upon opening the meeting and after determining that a quorum is present, the Chair shall call the meeting to order.

The ordinary order of business for each Board/Commission is specified in the San Leandro Administrative Code.

The Chair, with the approval of the members, may move items out of prepared agenda order. Any additions to the agenda must either comply with the Brown Act requirements to be placed on the agenda or they must be agendaized for a future meeting.

Quorum

A majority of the Members of the Board/Commission shall constitute a quorum for the transaction of business. If a quorum fails to attend or is lost, there should be no discussion of the agendaized items. If the

quorum is lost temporarily (bathroom break, etc.) the meeting can be recessed until the quorum convenes. If the quorum is lost for the duration of the meeting, the agenda item(s) should be continued to a future meeting.

Roll Call

Before proceeding with the regular business, the Secretary shall call the roll of the membership, and the names of those present shall be entered in the minutes.

Vote Taking

The vote may be taken by roll call or by show of hands or voice. All actions require the affirmative vote of a majority of the members of the body.

Amendments

Motions to amend the Rules of Procedures may only be made if the proposed amendment is placed on a meeting agenda. Amendments require City Council approval.

City Staff

City staff serves as support to Board/Commission Members. There must be a mutual understanding and acceptance of roles and responsibilities. Staff is responsible to ensure meetings are properly noticed and distributed, and to provide Members with support. Staff reports to and receive assignments from the City Manager (or Department Head). Board/Commission Members should not try to expand the assignments made to staff as this interferes with other assignments the staff may have and makes overall coordination more difficult. If there is a need, the Board or Commission Chair should consult the City Manager if new or added staff work is needed.

Trainings

Assembly Bill 1234 passed in 2005 requires all Members of Boards and Commissions to take a mandatory 2-hour ethics training within one year of appointment and every two (2) years thereafter. The City of San Leandro offers the training biannually but Members have the option to take the training online or with another agency. Each Member is responsible to supply the City Clerk’s Office with a copy of their certification of completion for training.

The City may from time to time provide trainings that are crucial or beneficial to your position, and strongly encourages you to attend them.

Members not fulfilling the required trainings may be considered cause for removal.

CONFLICTS OF INTEREST – *Political Reform Act*

The Political Reform Act (PRA), enacted by the voters in 1974, requires financial disclosure of interests by certain individuals in decision-making positions within state and local government. A financial conflict of interest exists when a person influences a decision that will have a material effect on an economic interest connected to that person or their immediate family. (See *Fair Political Practices Commission website* <http://www.fppc.ca.gov>)

Disqualification

The PRA prohibits public officials from making, participating in, or attempting to influence governmental decisions in which they have reason to know they have a financial interest. The PRA identifies six (6) basic kinds of economic interests:

1. Business entities in which you, your spouse, or dependent children have an investment;
2. Real property in which you, your spouse, or dependent children have an investment;
3. Sources of income paid to you or your spouse 12 months before the governmental decision was made;
4. Business entities in which you hold a position of management, employment, or executive responsibility;
5. Gifts totaling \$460 or more within 12 months before the time you make a governmental decision; and
6. Personal finances of you and you immediate family

If there is a decision before your Board/Commission that may affect any of the above economic interests, you should contact the City Attorney before you participate.

In order to determine if a conflict exists, ask yourself the following questions:

1. Are you making, participating in making, or using your "official positions" to Influence a governmental decision?
2. Do you have an economic interest involved in the decision?
3. Is it reasonably foreseeable that the decision will affect your economic interest?
4. Will the effect of the decision on your economic interest be material?
5. Will the effect of the decision on your economic interest be different from the effect on the general public?

If the answer to all of these questions is **yes**, then you have a conflict of interests and must disqualify yourself from making, participating in making or even influencing the decision. You should seek further advice from the City Attorney.

CONFLICT OF INTEREST – *Statement of Economic Interest (Form 700)*

As mentioned before, the PRA states that a financial conflict of interest exists when a person directly influences a decision that will have a material effect on an economic interest connected to that person or a member of the immediate family. Based on the requirements of the PRA, the City of San Leandro adopted a conflict of interest code, codified in Chapter 4.2 of the San Leandro Administrative Code, to determine which positions must report potential conflicts of interest.

Members of the following Boards and Commissions are subject to the City's conflict of interest code and must file a Statement of Economic Interests (Form 700). The Form 700 must be filed with the Office of the City Clerk during any of the following:

- a. Within thirty (30) days of assuming office
- b. Annually by April 1st of each year
- c. Within thirty (30) days of leaving office

Detailed instructions are included on the form. Please do not hesitate to contact the City Clerk's Office with any questions on filling out the form. If a filed form is incomplete or incorrect, an amended filing may be necessary. The City encourages those subject to file a Form 700, to do so electronically. This prevents errors and ensures timely filing of all required statements. As a designated filer, you must file a Form 700, even if you have no reportable interests to disclose.

Public Document

Form 700's are kept by the City Clerk's Office and are available for public inspection.

Gifts

Board/Commission Members who are required to file a Statement of Economic Interests (Form 700) may not accept gifts from any single source totaling more than \$460 in one calendar year.

APPENDIX A – *Helpful Phone Numbers*

| | |
|--------------------------------|--------------|
| Mayor and City Council | 510-577-3357 |
| City Manager’s Office | 510-577-3351 |
| City Attorney | 510-577-3361 |
| Community Development | 510-577-3371 |
| Engineering and Transportation | 510-577-3428 |
| Finance | 510-577-3376 |
| Human Resources | 510-577-3396 |
| Information Technology (IT) | 510-577-3393 |
| Library Services | 510-577-3970 |
| Police Department | 510-577-2740 |
| Public Works Department | 510-577-3440 |
| Recreation and Human Services | 510-577-3462 |

More contact information, including email addresses, are printed on the Official Family List and available on the City’s website.

APPENDIX B – *Parliamentary Procedures Condensed*

The following information covers the most commonly used motions and/or actions of parliamentary procedure such as the Amendment Process as well as the definitions of some basic terms and words.

“WHAT TO SAY AT A MEETING”

| IF YOU WANT TO... | YOU SAY TO THE CHAIR: |
|---|---|
| 1. Stop the meeting for a short break. <i>Motion may be made at any time during a meeting and must be acted on immediately.</i> | “I move that we recess.” |
| 2. Set a time for the next meeting. <i>Motion may be made at any time during a meeting and must be acted on immediately.</i> | “I move we fix the time of the next meeting.” |
| 3. Ask someone to speak louder or open a window or call attention to something concerning the comfort and well-being of the people at the meeting. <i>Motion may be made at any time during a meeting, is not debatable, and needs no second.</i> | “I rise to a question of personal privilege.” |
| 4. Bring a discussion back to the subject or get to the main part of the agenda. <i>Motion may be made at any time during a meeting, is not debatable, and needs no second.</i> | “I call for the orders of the day.” |
| 5. Correct a mistake that is against the by-laws of the group or rules of parliamentary procedure. <i>Motion may be made at any time during a meeting, is not debatable, and needs no second, unless one of the first four statements is being considered.</i> | “I rise to the point of order.” |
| 6. Ask a question or get more information on the procedure or business being discussed. <i>Motion may be made at any time during a meeting, is not debatable, and needs no second, unless one of the first four statements is being considered.</i> | “Point of information.” |
| 7. Question a Chair’s decision. <i>Motion may be made at any time during a meeting and is not debatable, unless one of the first four statements is being considered. Action requires a 2/3-vote to pass.</i> | “I appeal the decision of the Chair.” |
| 8. Discuss something without having to stick to the rules. <i>Motion may be made at any time during a meeting and is not debatable, unless one of the first four statements is being considered. Action requires a 2/3-vote to pass.</i> | “I move that we suspend the rules.” |

| IF YOU WANT TO... | YOU SAY TO THE CHAIR: |
|--|--|
| 9. Stop a motion you have made. <i>Motion may be made at any time during a meeting, is not debatable, and needs no second, unless one of the first four statements is being considered.</i> | "I wish to withdraw the motion." |
| 10. Prevent discussion of a motion. <i>Motion may be made at any time during a meeting, is not debatable, and needs no second, unless one of the first four statements is being considered. Action requires a 2/3-vote to pass.</i> | "I object to consideration of the motion." |
| 11. Have a motion put aside until later. <i>Motion may be made when no other motions are being considered, is not debatable, and needs a second.</i> | "I move we table the motion." |
| 12. Interrupt discussion of a motion so that the Board/Commission can consider a more important question. <i>Motion may be made when no other motions are being considered, is not debatable, and needs a second.</i> | "I move we table the motion." |
| 13. Bring up a motion that has been tabled. <i>Motion may be made when no other motions are being considered, is not debatable, and needs a second.</i> | "I move the motion be taken from the table." |
| 14. Limit a discussion when time is short or the discussions are going too long. <i>Motion may be made when no other motions are being considered, is not debatable, and needs a second. Action requires a 2/3-vote to pass.</i> | "I move we limit the debate." |
| 15. End a discussion. <i>Motion may be made when no other motions are being considered, is not debatable, and needs a second. Action requires a 2/3 vote to pass.</i> | "I move we close the debate." |
| 16. Put something off until another meeting. <i>Motion may be made when no other motions are being considered, and needs a second.</i> | "I move we postpone this matter." |
| 17. Ask a committee or a member to study an idea or recommendation. <i>Motion may be made when no other motions are being considered, and needs a second.</i> | "I move we refer (or commit) this to ..." ... |
| 18. Change or add to someone else's motion. <i>Motion may be made when no other motions are being considered, and needs a second.</i> | "I wish to amend the motion to read ..." (You can amend a motion only twice.) |

| IF YOU WANT TO... | YOU SAY TO THE CHAIR: |
|---|--|
| <p>19. Reconsider a vote when it is felt that new facts have been uncovered which have changed the minds of some members.</p> <p><i>Motion must be made by a member who voted on the winning side. Motion may be made when no other motions are being considered, and needs a second.</i></p> | <p>“I move to reconsider that your motion on...”</p> |
| <p>20. To end the meeting.</p> <p><i>Motion may be made when no other motions are being considered, and needs a second.</i></p> | <p>“I move that the meeting adjourn.”</p> |

APPENDIX C – *The Parliamentary Amendment Process*

The following information regarding amendments is taken from Robert's Rules of Order, Newly Revised:

- I. Amending a motion that has been made:
 - I move to amend by adding ...
 - I move to amend by inserting the word ...before the word ...
 - I move to amend by striking out the word "individual" and inserting "member".
 - I move to substitute for the pending resolution the following resolution: "Resolved, that ..."
- II. Amending the amendment of a pending motion:
 - I move to insert in the pending amendment the word ...before the word ...
 - I move to amend the pending amendment by...
- III. Amending something previously adopted:
 - I move to amend the resolution relating to ...adopted at the meeting on ..., by...
- IV. Amending by-laws or constitution, when not pending:
 - In accordance with the notice given, I move the adoption of the following amendment to the by-laws...

Amendments are made if a main motion might be more acceptable or suitable in an altered form. Before the main motion is voted upon, a proposal to change its wording can be introduced by moving to amend the motion. Amendments must always be germane (related to or having a bearing on the subject of the motion) thus no new subject can be introduced disguised as an amendment.

After a motion has been amended, the assembly votes first on the amended motion. The rejection of a motion to amend leaves the original motion worded as it was before the amendment was introduced. On the other hand, the adoption of the amendment does not adopt the motion which was amended; that motion remains pending in its modified form.

The need for amending motions is significantly reduced if the maker of the motion will think through the wording of a motion before stating. It is always helpful to write out the motion before offering it so that the Secretary will have the exact wording of the motion.

APPENDIX D – *Parliamentary Words and Terms*

ABSTAIN – Not voting one way or the other.

ADJOURN – Ending the meeting.

ADOPT – To okay or accept.

AGENDA – An outline of things done at a meeting.

AMENDMENT – Adding onto a motion, usually to improve it, enlarge its intent, or make it more understandable.

APPEAL THE DECISION OF THE CHAIR – To question the Chair's decision and ask the group to change it.

APPOINT – To place someone in a job or position.

BY-LAWS – The rules a group has, agreed to follow and the goals of the organization.

CAUCUS – Getting together outside the regular meeting to decide on plans, position, policy, and/or people to nominate.

CHAIR – The position held by the meeting's leader.

COMMITTEE – A group that reviews and reports on a special task given them by the larger membership. A committee can recommend actions to be taken based on its findings.

GENERAL CONSENT – Approval by the group. If even one member objects, a vote must be taken.

MINUTES – Official record of a meeting.

MOTION – A member's proposal for action.

NOMINATE – To recommend a person for election to office.

PENDING – Still "up in the air" and undecided.

PERSONAL PRIVILEGE – Calling attention to something having to do with the well-being of the people at the meeting, such as asking to have a window opened.

POINT OF INFORMATION – Asking for more information before making a decision.

POINT OF ORDER – Correcting a mistake that is against the rules of the organization.

PRO TEM – Temporary

PROXY – Permission given (usually written) by one member for another member to vote in his name.

ORDERS OF THE DAY – Calling for the group to get back to agenda or the main business of the meeting.

QUESTION – A motion that is under discussion with a vote to be taken on it.

RECESS – Taking a short break.

MAJORITY OPINION – The decision of more than half the voting members.

MINORITY OPINION – The position held by less than half of the voting members.

SECOND – Support for a motion. Before a group can handle a proposed, it must know that two people want to have it discussed.

SPECIAL COMMITTEE – A committee selected to handle a single task or event (also known as an "ad hoc" committee).

UNANIMOUS VOTE – Everyone votes the same way.

RESCIND – To take back, or withdraw.

RESOLUTION – Usually a policy statement being suggested to the group for approval.

STANDING COMMITTEE – A committee that goes year-round such as a program planning committee.

SUSPENDING OF THE RULES – Discussing something without sticking to the rules of the meeting.

VETO – to turn "thumbs down" on a motion or idea.

APPENDIX E – *Brown Act Guide*

The following is a brief outline of the key provisions of the Brown Act and how they apply to the City Council and Boards and Commissions. This is an overview and is not intended to be a comprehensive summary.

The Ralph M. Brown Act was enacted by the Legislature in 1953. Beginning at Government Code section 54950, it contains a myriad of detailed and technical requirements governing the conduct of meetings of local agencies, as well as the conduct of the governing officials of those agencies.

Although there have been some revisions throughout the years, two key provisions of the Brown Act have remained unchanged since its passage. The first is the intent section, which provides as follows:

"In enacting this chapter, the Legislature finds and declares that 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 their authority, do not give their public servants the right to decide what is good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (Section 54950)

The second key provision of the Act is contained in section 54953:

"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."

I. **APPLICABILITY OF THE ACT**

Section 54952 sets forth a comprehensive definition of "legislative body" which includes commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.

Advisory committees comprised solely of less than a quorum of the legislative body are not legislative bodies as long as they are not standing committees. (Section 54952(b)) Standing committees of the legislative body, despite their composition, which have continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of the legislative body, are legislative bodies for purposes of the Act. (Section 54952(b))

II. **WHAT IS A MEETING?**

If official business is discussed, any gathering of a quorum, no matter how informal, is a "meeting" subject to the requirements of the Brown Act. The Brown Act does not apply to:

- A) Individual contacts between a member and any other person that do not violate section 54952.2(b) (Section 54952.2(c)(1));
- B) Attendance by the majority at a conference or similar gathering open to the public that involves a discussion of issues of general interest, provided a majority of the members do not discuss business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(2));
- C) Attendance by a majority at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided a majority of the members do not discuss business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(3));
- D) Attendance by a majority at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of another legislative body of another local agency, provided that a majority do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency (Section 54952.2(c)(4));
- E) Attendance by a majority at a purely social or ceremonial occasion, provided a majority of the members do not discuss business of a specified nature that is within the subject matter jurisdiction of the local agency (Section 54952.2(c)(5)); and

- F) Attendance by a majority at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers (Section 54952.2(c)(6)).

III. AGENDA REQUIREMENTS

Regular Meetings

At least 72 hours before a regular meeting, the legislative body, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description is defined to generally not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

In general, no action can be taken if the item is not listed on the agenda.

One exception is made upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as required. (Section 54954.2(b)(2))

Action may also be taken on an item not listed in the agenda if a determination is made, by a majority vote, that an "emergency situation" exists. (Section 54954.2(b)(1)). "Emergency situation" is defined narrowly as either a work stoppage or other activity which severely impairs the public health or safety, or a crippling disaster which severely impairs public health or safety. (Section 54956.5)

Each legislative body shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required, for the conduct of business of that body, and the time and place for holding regular meetings. This requirement does not apply to advisory and standing committees. (Section 54954)

Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting, shall be considered as regular meetings of those bodies. (Section 54954)

Special Meetings

A special meeting may be called at any time by the presiding officer of the legislative

body, or by a majority of the members of the legislative body, by delivering personally or by any other means, written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing.

The notice shall be received at least 24 hours before the meeting and shall specify the time and place, and the business to be transacted or discussed. No other business shall be considered by the legislative body.

The written notice may be dispensed with as to any member who at, or prior to the time that the meeting convenes, files with the clerk or secretary of the legislative body a written waiver of the notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

Notice shall be required pursuant to the section, regardless of whether any action is taken at the special meeting. The call and notice shall be posted at least 24 hours prior to the special meeting, in a location that is freely accessible to members of the public. (Section 54956)

Emergency Meetings

There are two definitions of emergency situations which can result in the necessity for a legislative body to hold an emergency meeting.

Emergency situations are defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

Dire emergency situations are defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist act that poses immediate and significant peril as determined by a majority of the members of the legislative body.

In both situations, the legislative body may hold an emergency meeting without complying with either the 24 hour notice or posting requirements. Instead, notice shall be given by telephone by the presiding officer of the legislative body to each local newspaper of general circulation and radio or television station that has requested notice of special meetings. Such notice shall be given one hour prior to the emergency meeting, or in the case of a dire emergency meeting, at or near the time that the presiding officer notifies the members of the legislative body of the emergency meeting.

All telephone numbers provided in the most recent request of such newspaper or

station for notification of special meetings must be exhausted. In the event that telephone services are not functioning, the notice requirements are waived and the legislative body or designee of the legislative body must notify those newspapers, radio stations, or television stations, as soon as possible after the meeting, of the purpose of the meeting and any action taken.

During an emergency meeting, the legislative body may meet in closed session if agreed to by two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by unanimous vote. In addition, with the exception of the 24 hour notice requirement, all of the requirements of special meetings must apply to emergency meetings. (Section 54956.5)

Regular & Special Meetings- Standing Request for Notice

Any person may request a copy of the agenda, or a copy of all documents constituting the agenda packet of any meeting of the legislative body. Upon receipt of the written request, the legislative body or its designee shall mail the materials at the time the agenda is posted or upon distribution to the legislative body, whichever occurs first. Any request for mailed copies of agendas shall be valid for the calendar year in which it is filed, and must be renewed the following January 1 of each year. The legislative body may establish a fee that does not exceed the cost of providing the service.

Failure of the requesting person to receive the agenda pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda was not received. (Section 54954.1)

Supporting Documentation

All disclosable writings related to an agenda item that are distributed to a majority of the members of the legislative body must be made available to the public upon request without delay. (Section 54957.5(a))

If these writings are distributed to a majority of the members of the legislative body less than 72 hours before the meeting (i.e. after the agenda is posted), they must be made available for public inspection at a public office or location designated by the local agency. (Section 54957.5(b)(1)) The address of the designated office or location must be listed on the agenda. (Section 54957.5(b)(2))

If these writings are distributed to a majority of the members of the legislative body during the meeting, they must be made available for public inspection at the meeting if prepared by the local agency or a member of the legislative body, or after the meeting if prepared by another person. (Section 54957.5(c))

Compliance with ADA

The agenda and all disclosable writings related to an agenda item which are distributed to a majority of the members of the legislative body must be made available in appropriate alternate formats upon request by a person with a disability, as required by the Americans with Disabilities Act of 1990. (Sections 54954.2(a)(1) and 54957.5(c)) The agenda must include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. (Section 54954.2(a)(1))

IV. TELECONFERENCING PERMITTED

All meetings of the legislative body shall be open and public, and all persons shall be permitted to attend any meeting, except as otherwise provided. Notwithstanding any other provision of law, the legislative body may use teleconferencing for the benefit of the public in connection with any meeting.

Teleconferencing may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during the teleconference meeting shall be by roll call. If the legislative body elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body.

Each teleconference location shall be identified in the agenda and shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly at each location. (Section 54953.)

V. WHAT IS ACTION TAKEN?

"Action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body, upon a motion, proposal, resolution, order or ordinance. (Section 54952.6)

Many items are discussed when no action is taken. However, if discussion has

proceeded to a point where a general consensus by a majority of the members has been reached, a court could conclude that action has been taken, even though a formal vote is put off to a later date.

VI. KNOWINGLY TAKING ACTION IN VIOLATION OF THE ACT MAY BE A CRIME

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of the Act, with wrongful intent to deprive the public of information to which it is entitled under this chapter, is guilty of a misdemeanor. (Section 54959)

Examples of conduct which could constitute a violation are:

- 1) Taking action on an item in closed session when an open meeting is required;
- (2) Taking action on an item not listed on the agenda; and
- (3) Taking action at a meeting held without notice.

The standard for criminal culpability in terms of a mental state is “wrongful intent” to deprive the public of information to which it is entitled to, pursuant to the Brown Act. This is a very difficult standard to prove and there are no reported cases involving criminal liability.

VII. PUBLIC COMMENT

Every agenda for regular meetings must include an opportunity for members of the public to address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item.

Every notice for a special meeting shall provide an opportunity for members of the public to address the legislative body concerning any item that has been described in the notice before or during consideration of that item.

VIII. PUBLIC'S RIGHTS WHILE ATTENDING A MEETING

In order to attend a public meeting of a legislative body, a member of the public shall not be required to register his or her name, to complete a questionnaire, or otherwise to fulfill any condition in order to attend the meeting. (Section 54953.3)

If an attendance list or similar document is posted or circulated, it must clearly state

that signing or completing it is voluntary.

In the absence of a reasonable finding by the legislative body that the recording would constitute a disruption of the proceeding, any member of the public has a right to record the proceeding with an audio, videotape recorder or motion picture camera. (Section 54953.5)

IX. CLOSED SESSIONS

Agenda items may be discussed in closed session under certain limited circumstances. The most frequently used exceptions are:

- (1) Litigation - to discuss actual or the threat of litigation involving the local agency (section 54956.9);
- (2) Personnel - to discuss matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or facilities, to consider the appointment, employment, performance evaluation, discipline, or dismissal of a public employee, or to hear complaints or charges brought against the employee, unless the employee requests a public session (section 54957);
- (3) Real estate negotiations - to discuss the purchase, sale, exchange or lease of real property by or for the local agency (section 54956.8); and
- (4) Labor negotiations - to discuss with designated representatives the salaries, salary schedules, or compensation paid in the form of fringe benefits for represented and unrepresented employees (section 54957.6).

The legislative body shall describe the closed session item on the agenda and state the section that authorizes the closed session. (Section 54954.5) The local agency must disclose the name(s) of its real property negotiators prior to discussing the purchase, sale, exchange or lease of real property. This requirement also applies to disclosing the name(s) of designated representatives regarding labor negotiators. (Section 54954.5)

While still in open session, the local agency, must identify the negotiators, the real property and the persons with whom the negotiators may negotiate. Negotiators may be members of the local agency. (Section 54956.8)

The local agency must also identify its designated representatives, to discuss the salary, salary schedules, or fringe benefits of its represented and unrepresented employees, (Section 54957.6)

Prior to adjournment, the body must reconvene in open session and publicly report any reportable action taken in closed session. (Section 54957.1)

Disclosure of confidential information that is acquired during closed session is prohibited unless the legislative body authorizes such disclosure. Confidential information is defined as a communication made in closed session that is specifically related to the basis for the legislative body to lawfully meet in closed session.

X. CIVIL REMEDIES AND ENFORCEMENT

A civil action may be commenced to stop or prevent violations, including past and/or continued violations, or threatened violations of the Act. (Section 54960, 54960.2, and 54960.5) A civil action may also be commenced to set aside an action taken in violation of the open meeting requirement, the agenda posting requirements, or the special meeting requirements. (Section 54960.1)

If a court determines that the Brown Act was violated, court costs and reasonable attorney fees may, and in some situations must, be awarded to the complaining party. (Section 54960.5)