

# City Officials' Protocol Manual 2024

A Framework for Good Governance



## ***Arcata City Council***

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## CHAPTER ONE—Introduction and Overview

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As a public official, you not only establish important and often critical policies for the community of Arcata, you are also a member of a public corporation having an annual budget of several million dollars. The scope of services and issues addressed by the city organization go well beyond those frequently reported in the newspaper or discussed at City Council meetings.

### Basic Definitions

1. **Chair** is the individual authorized by law, the Arcata Municipal Code or City policy to oversee, direct and preside over the public meeting of the City Council, Planning Commission, or any other City board, commission, or committee.
2. **City Council** is the governing body of the City of Arcata, comprised of five (5) Councilmembers of whom one (1) is selected to be the Mayor and one (1) is selected to be the Vice-Mayor.
3. **City Official** is an elected or appointed member of the Arcata City Council or Arcata Planning Commission, or any other City board, commission, or committee established by ordinance or City Council policy.
4. **City Clerk** is the Arcata City Clerk, and the associated duties and responsibilities of the City Clerk are those denoted in this Manual, unless otherwise required by State law or the Arcata Municipal Code.

## 1.1—Council-Manager Form of Government

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The City of Arcata has a Council-Manager form of government. As described in the Arcata Municipal Code and the Government Code of California, certain responsibilities are vested in the City Council and the City Manager. Basically, this form of government prescribes that a City Council's role is that of a legislative policy-making body which determines not only the local laws that regulate community life, but also determines public policy and gives direction to the City Manager to administer the affairs of the city government in a businesslike and prudent manner. (See generally, Arcata Municipal Code. Title II and California Government Code § 34000, *et seq.*).

The City of Arcata was incorporated in 1858. At that time, the separately elected City Clerk was the administrative officer for municipal affairs. There was also a separately elected City Treasurer. The City Council established Arcata as a Council-Manager form of government in 1958 and hired its first City Manager that year. Shortly after that, the position of City Clerk was changed from elected to appointed and the City Treasurer position was changed to the appointed Finance Director position.

## 1.2—Purpose of City Council Protocol Manual

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The City has prepared this Manual to assist Councilmembers and other City Officials by documenting accepted practices and clarifying expectations. This Manual should serve as a reference on adopted practices and procedures pertaining to Arcata City Council meetings, meetings of Boards, Commissions, or Advisory Groups, provide an overview of City operations, Council powers and responsibilities, expected behavior and decorum from Councilmembers, other elected or appointed officials, and the public, as well as related matters. While attempting not to be overly restrictive, procedures are established so that expectations and practices can be clearly articulated to guide City Officials in their actions.

This Manual supersedes any other manuals which govern the Council, Boards, Commissions, or Advisory Groups, and the handling of their meetings.

## 1.3—Overview of Basic Documents

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This Protocol Manual provides a summary of important aspects of City Officials' activities. However, it cannot incorporate all material and information necessary for undertaking the business of City Officials. Many other laws, plans, and documents exist which bind City Officials to certain courses of action and practices. The following is a summary of some of the most notable documents that establish City Official direction.

### *A. Codes of the State of California*

The state laws contain many requirements for the operation of city government and administration of public meetings throughout the state. Arcata is a "general law city" which means it operates under applicable general laws of the state. As a general law city of the state of California, Arcata is vested with all the powers of incorporated cities as set forth in the California Constitution and the applicable California state laws.

### *B. Arcata Municipal Code*

The Municipal Code contains local laws and regulations adopted by ordinances. Title II of the Code addresses the role and relationship of the City Council, Mayor, and Vice-Mayor. It also describes the organization of the Council, Board, Commissions, and Advisory Group meetings, and the responsibilities and appointment of certain City staff positions, advisory boards, and commissions. In addition to these administrative matters, the Municipal Code contains a variety of laws including, but not limited to, zoning standards, health and safety regulations, traffic regulations, building standards, and revenue and finance policies.

### *C. Council's Goals & Priority Projects*

The City Council sets both long-term and short-term goals for the City each spring. The goal-setting

process includes a review of the previous year's goals including progress toward completion and updating. The budget is then written with the objective of working toward completion of those goals.

#### *D. Annual Budget*

The annual budget is set for the fiscal year beginning July 1 and ending June 30. It is the primary tool and road map for accomplishing the goals of the City. The budget document is the result of one of the most important processes the City undertakes. By adopting the annual budget, the City Council makes policy decisions, sets priorities, allocates resources, and provides the framework for government operations. Study sessions on the budget are generally held in May and public hearings and adoption in June.

#### *E. Annual Financial Audit*

The annual financial audit includes the financial statements of the City of Arcata for the fiscal year. It includes the financial condition of the City as reflected in the balance sheet, the results of operations as reflected in income statements, an analysis of the uses of City funds, and related footnotes. The annual financial audit includes statements for the various groups of funds and a consolidated group of statements for the City as a whole. The City Council has the responsibility of hiring an independent auditor, and of reviewing and accepting the audit.

#### *F. General Plan*

A state-mandated General Plan addresses the City's long-range planning needs relative to land use, transportation, economic development, and other planning elements. The City's General Plan is reviewed on an ongoing basis, but mandatory elements may only be revised four times a year. Certain amendments necessary for affordable housing development are not subject to this limitation. (California Government Code § 65358).

#### *G. Five-year Capital Improvement Plan*

The Five-year Capital Improvement Program serves as a guide for determining priorities, planning, financing, and construction of capital projects which add to, support, or improve the physical infrastructure, capital assets, or productive capacity of City services.

#### *H. Disaster Preparedness /Emergency Operations*

The City maintains an Emergency Operations Plan that outlines actions to be taken during times of extreme emergency. The City Manager served as the designated Director of Emergency Services. Upon request by the Director of Emergency Services the City Council may proclaim the existence or the threatened existence of a Local Emergency. The City Council may be called upon during an emergency to establish policies related to



a specific incident. The chain of command is as follows:

The City Manager is the Director of Emergency Services. If the City Manager is not available, the Police Chief is designated followed by the City Engineer, the Director of Environmental Services and Director of Community Development.

*(See Arcata Municipal Code Title II, Chapter 6, §§ 2700–2709)*

## 1.4—Orientation of New City Officials

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It is important for the new and incoming City Officials to gain an understanding of the full range of services and programs provided by the City. As Councilmembers join the Council or other City Officials join their respective Commission, Board, or Committee, The City Manager's office staff coordinates with Department Directors for members to tour facilities and meet with key staff. At any time, if there are facilities or programs about which City Officials would like more information, arrangements will be made to increase awareness of these operations. City Councilmembers and certain City Officials are required to receive Ethics AB1234 training and Harassment Prevention/Abusive Conduct Training as required by State Law. City Officials are encouraged to seek out training in local municipal governance, racial equity/race awareness, City financing, California environmental regulatory framework, economic development, and other applicable municipal trainings.

### *A. Council Orientation*

As new members join the City Council, the following orientation will be provided to each member in a timely manner.

- a. The City Manager will host an orientation program to distribute materials outlining City policies and protocols.
- b. The City Manager will facilitate a meeting with the City Attorney for conflict-of-interest training, review of current legal matters, and a review of parliamentary procedures.
- c. The City Manager will arrange a meeting with Human Resources prior to the first pay period to cover information reviewed with all City employees (e.g., benefits elections, I-9, retirement options, etc.).
- d. The City Manager will arrange meetings with Department Heads to be briefed on current projects within their Department, to receive an update on labor negotiations, and to tour City facilities.
- e. The City Manager will arrange an opportunity for "ride-alongs" with the Arcata Police Department.
- f. The City Manager's Office staff will arrange a meeting for a briefing on various aspects of City

Hall, including, but not limited to, travel procedures, email, phone service, elected officials' role during emergencies and disasters, etc.

- g. The City Manager will provide information for attendance at the League of California Cities' New Mayors and Council Members Academy.

### ***B. Boards, Commissions, and Advisory Members Orientation***

Newly appointed advisory body members receive a copy of this handbook and should become familiar with the work of the body on which they are about to serve. Each newly appointed member should contact the advisory body's staff liaison for an introduction to current issues. A review of the previous meeting minutes will also give the new member an overview of the body's work.

Upon appointment, members of the Planning Commissioners are required by the Political Reform Act and the City's Conflict of Interest Code to file annual Statements of Economic Interests (Fair Political Practices Commission Form 700) with the City Clerk. This form must also be completed and filed when assuming and leaving office.

The Planning Commission members are required to complete two hours of training in ethics principles and laws every two years and when first assuming office. These trainings are offered online and periodically within Humboldt County. Course completion certificates need to be filed with the City Clerk.



Photo courtesy of Leslie Scopes Anderson



## CHAPTER TWO—Arcata City Council General Powers and Responsibilities

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### 2.1—Arcata City Council, Generally

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Fundamentally, the powers of the City Council are to be utilized for the good of the community and its residents; and to provide for the health, safety, and general welfare of the residents. The City Council is the policy-making and law-making body of the City. State law and local ordinances define the powers and responsibilities of the Council.

It is important to note that the Council acts as a body. No member has any extraordinary powers beyond those of other members. While the Mayor has some additional ceremonial and presiding officer responsibilities as described below, when it comes to establishing policies, voting, and in other significant areas, all members are equal. It is also important to note that policy is established by at least a majority vote of the Council. While individual members may disagree with decisions of the majority, a decision of the majority does bind the Council to a course of action. Councilmembers should respect adopted Council policy. In turn, it is the staff's responsibility to ensure the policy of the majority of the Council is upheld.

The actions of staff to pursue the policy direction established by a majority of the Council do not reflect any bias against Councilmembers who hold a minority opinion on an issue.

#### *A. Council Non-Participation in Administration*

In order to uphold the integrity of the Council-Manager form of government and to provide proper checks and balances, members of the City Council shall refrain from becoming directly involved in the administrative affairs of the City unless directed by a majority of the Council to participate in a policy or project. As the Council is the policy-making body and the maker of local laws, its involvement in enforcement of ordinances would only damage the credibility of the system.

### 2.2—Role of Councilmembers

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Members of the Arcata City Council are collectively responsible for establishing policy, adopting an annual budget, and providing vision and goals to the City Manager. The following outline is a brief description of the various duties of Councilmembers. The description is not intended to be comprehensive, but rather it is an effort to summarize the primary responsibilities of the Council.

*Summary of Council Duties and Responsibilities as Provided in, but not limited to, State Law*

**1. *Councilmembers serve as the:***

- a. City Council
- b. Governing Body for the Successor Agency to the Arcata Community Development Agency
- c. City of Arcata Joint Powers Financing Authority
- d. Personnel Board

**2. *Establish Policy, through motion, resolution or ordinance to, for example:***

- a. Adopt annual goals and objectives
- b. Establish priorities for public services
- c. Adopt/amend the operating and capital budgets
- d. Establish procurement policies
- e. Adopt resolutions

**3. *Enact Local Laws***

- a. Adopt ordinances

**4. *Supervise Appointed Officials***

- a. Appoint City Manager and City Attorney
- b. Evaluate performance of City Manager and City Attorney
- c. Establish boards, commissions, committees and task forces
- d. Make appointments to such bodies
- e. Provide direction to advisory bodies

**5. *Make Decisions, Give Direction***

- a. Study problems
- b. Review alternatives
- c. Determine best course of public policy
- d. Call special elections as necessary

## 2.3—Selection of Mayor and Vice-Mayor

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The Council rotates/selects the Mayor and Vice-Mayor each year during a regular or special meeting in December. In election years, the Mayor and Vice-Mayor will be selected during the City Council meeting in which election results are certified. The City Council believes that experience as a Councilmember will assist those who are selected to serve as Mayor or Vice-Mayor and has outlined a process that provides Councilmembers an opportunity to gain experience in cycles of governing prior to assuming their respective offices. Rotation to Vice-Mayor is based on the length of time a councilmember has served since last being elected mayor and if needed the total vote count of his/her last election and works as follows:

1. The Vice-Mayor rotates to the position of Mayor.
2. The member with the most continuous time of service on the Council who has not previously served as Mayor during this service period will be selected as Vice-Mayor.
3. If two or more members have equal time of continuous service, the member who received the highest number of votes at his/her election shall be selected.
4. If a Councilmember is appointed to fill a mid-term vacancy, that Councilmember will go to the bottom of the rotational list.
5. Incumbent Councilmembers, when re-elected, do not begin anew at the bottom of the list, but rather retain their placement in the rotation.
6. A Councilmember may decline to serve as Mayor or Vice-Mayor. In this case, the office would pass to the next Councilmember on the list. The Councilmember who declined may drop back one position in the rotation.
7. When the Council reorganizes, the outgoing Mayor will nominate the Vice-Mayor to succeed him/her. The newly appointed Mayor will then nominate the next Councilmember in the rotational sequence to serve as Vice-Mayor for the coming year.

The process described above shall guide the Council's selection of the Mayor and Vice-Mayor; however, a majority of the City Council retains the authority to disregard the process and select any member of the City Council for these positions.

## 2.4—Role of Mayor

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### *A. Presiding Officer*

The Mayor serves as the presiding officer, unless otherwise delegated, acts as chair at all meetings of the City Council, and performs all such other duties consistent with the office as may be imposed by the Council. The Mayor and a representative of the Council set the Agenda for regular and special Council meetings. The Mayor or a majority of the Council call all special meetings. The Mayor may participate in all deliberations of the Council in the same manner as any other member and is expected to vote in all proceedings unless a conflict of interest exists. During Council proceedings, the Mayor facilitates discussion, gauges direction, and listens for majority support prior to calling for a vote on a motion. The Mayor does not possess any power of veto. State law allows the Mayor to move or second an action. As a matter of Arcata tradition, the Mayor typically does not make a motion and will only second a motion in rare and unusual circumstances (California Government Code §§ 36801–36815). A list of the typical routine functions of the Mayor is included in Appendix I.

### *B. Ceremonial Representative and Other Duties of the Mayor*

The responsibility to act as the City Council's ceremonial representative at public events and functions has been assigned to the Mayor. However, all Councilmembers are encouraged to participate. The Mayor may initiate and execute certificates of appreciation and recognition, and Council approved proclamations.

## 2.5—Vice-Mayor, Absence of Mayor and Councilmembers

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In the absence of the Mayor, the Vice-Mayor shall perform the duties of the Mayor. When both the Mayor and Vice-Mayor are absent, the Mayor will designate another Councilmember to serve as Acting Mayor, who shall, for the term of such absence, have the powers of the Mayor. [See 7.12]

## 2.6—Resignation of Mayor or Vice-Mayor

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If the Mayor or Vice-Mayor resigns, the City Council will select a new Mayor or Vice-Mayor using the procedures set out in section 2.3.

## 2.7—Emergency Response

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The City Council has extraordinary powers for the protection of persons and property within the City in the event of an emergency. The City Council may proclaim the existence of an emergency. If the City Council is not in session, the Director of Emergency Services may proclaim the existence of an emergency, which proclamation shall be reviewed and ratified by the City Council within seven (7) days (Arcata Municipal Code, Title II, Chapter 6, § 2703).

## 2.8—Appointment of Officers

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The City Council is responsible for appointing two positions within the City organization-- the City Manager and the City Attorney. The City Manager and the City Attorney serve at the pleasure of the Council. The City Manager is responsible for all personnel within the City organization.

1. **City Manager:** Is an employee of the City and has an employment agreement which specifies terms of employment, including an annual evaluation by the City Council. The City Manager shall be the administrative head of the City government under the direction of the City Council, except as otherwise provided in the Arcata Municipal Code. They shall be responsible for the efficient administration of all the affairs of the City which are under the City Manager's control. In addition to their general powers as administrative head, and not as a limitation thereon, it shall be the City Manager's duty and the City Manager shall have the powers listed in the Arcata Municipal Code.
2. **City Attorney:** City Attorney services will be provided by contract. The City attorney attends City Council meetings as requested, as well as other meetings at the request of the City Council or City Manager, as deemed necessary.

## 2.9—Boards, Commissions, Committees and Task Forces

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Boards, commissions, committees, and task forces provide a great deal of assistance to the Arcata City Council when formulating public policy and transforming policy decisions into action. The City has several standing boards, commissions and committees. In addition, special purpose task forces are often appointed by the City Council to address specific issues of interest on a limited duration basis. These ad hoc committees are dissolved upon completion of the intended task. Committees and task forces are purely advisory to the Council and, in some situations, staff. Commissions have final decision-making authority, subject to appeal to the City Council, but may also serve in an advisory capacity in certain situations. The Board of Permit Appeals makes final decisions on matters arising under the Uniform Building Code and its final decisions are not subject to review by the City Council.

Each City board, commission, committee and task force acts as a political body conducting public business and, therefore, follows the same rules as does the City Council. Each body's decisions and recommendations are determined by at least a majority vote of the membership. While individual members may disagree with decisions of the majority, a decision of the majority binds the body to a course of action.

The procedures established in this Manual reflect the policy of the City Council regarding the appointment of volunteers to the various bodies of the City. The establishment of these procedures ensures that well-qualified, responsible, and willing residents are given the opportunity to serve the City and participate in the governance of their community.

The City Council is specifically empowered to create all boards, commissions, committees and task forces, pursuant to the provisions of the Arcata Municipal Code, as the Council deems necessary or advisable. In the exercise of this power, it is the desire of the City Council to establish a consistent policy in its decision-making role to equitably evaluate those citizens of the community who demonstrate a desire to serve on such boards, commissions, committees, or task forces (Arcata Municipal Code Title II, Chapter 3).

### *A. Application Process*

Any person interested in serving on an advisory body is invited to complete an application form and submit it to the City Manager's Office. When a vacancy occurs, a vacancy is posted on the City website, and applications are accepted. The applications are forwarded to all members of the City Council.

For full-term vacancies, the filing period is as determined by Ordinance. For all vacancies, the City Clerk will:

1. Advertise vacancies.
2. Invite the incumbents whose terms are expiring to consider being reappointed.
3. Accept applications.
4. Prepare interview packets for Councilmember review prior to the Council interview period, including: 1) A list of current membership; 2) A list of current vacancies and term expirations; 3) A summary of the duties and responsibilities of the vacant position on the Commission or Committee; 4) The applications; and 5) Recommendations from the staff liaison outlining needed expertise on the Commission or Committee, if any.

### *B. Qualifications*

To serve on a City of Arcata advisory body, an appointee must be either a resident or must either live or work within the Arcata Planning area. Exceptions are members of the Board of Permit Appeals, the Historic Landmarks Committee, and the Forest Management Committee.

Appointees may serve on one board, committee or commission at a time. The exception to this is Transactions and Use Tax Oversight Committee members, who may serve concurrently on other City advisory bodies and Task Forces as they are developed. City Council members may not serve on any advisory body during their terms on the Council.

### *C. Council Action*

1. The Council may interview each applicant, at a time and place to be designated by the Council.



The Council reserves the right to make appointments without conducting interviews.

2. The Council may appoint a sub-committee to review applications or conduct interviews of applicants and make recommendations to the full Council for appointment.
3. After applicants are evaluated, the Council will deliberate and reach a decision at its earliest convenience.
4. The City Clerk will notify each applicant of the decision of the Council and provide a copy of the City Commission/Committee Handbook for new members. The City Clerk will also notify the commission/committee's staff liaison of the Council's decision. The staff liaison will notify the chair of the Council's decision and will contact the new member and provide orientation prior to the next scheduled meeting.
5. All Council interviews, deliberations and actions to appoint members to boards, committees and commissions are subject to the Ralph M. Brown Act (state open meetings act, attached as Appendix B), and as such, must be noticed and open to the public.

#### ***D. Resignations***

Vacancies occurring in the middle of a term shall be filled by appointment for the unexpired portion of the term in the same manner provided herein for initial appointment [Arcata Municipal Code, Title II, Chapter 3, § 2202(C)] and California Government Code Section 36512.

In general, when a vacancy occurs on the City Council, the Council has two options and 60 days to decide how to act. The Council may either appoint a successor or call a special election to fill the vacant seat.

**Option One:** The Council may within 60 days from the commencement of the vacancy appoint a successor to fill the vacant seat. If the Council chooses to seek an appointment, the process is up to the Council, and can begin with a call for applications for the Council to begin the appointment process.

How long the appointed successor holds office depends on when the vacancy arose. If the vacancy arises during the second half of the term, the appointed successor holds office for the remainder of the original term, If the vacancy arises during the first half of the term, the appointed successor holds office until the next regular municipal election.

**Option Two:** The Council may within 60 days from the commencement of the vacancy call a special election to fill the vacant seat. The election must be held at the next regularly established election date at least 114 days after calling the election. An elected successor holds office for the remainder of the original term.

#### ***E. Councilmembers' Roles and Relationships with City Bodies***

1. Because the Council has the ability to review decisions made by the commissions and recommendations made by committees and task forces, Councilmembers shall not be appointed to City boards, commissions, committees, or task forces concurrent with their term of office.

2. Unless specifically authorized by a majority vote of a quorum of the Council, no Councilmember shall be authorized to testify before or direct the work of any board, commission, committee or task force of the City.
3. If a Councilmember is testifying in such a capacity pursuant to the above provision, testimony should be undertaken in such a manner as to assure public confidence in the decision-making process and avoid the appearance of bias, prejudice, or improper influence. Toward this purpose, the following protocol should be observed:
  - a. Councilmembers shall not testify in matters pending before any commission, committee, or task force that will receive, or could potentially receive, future appeal or review before the City Council. Violation of this protocol shall require the Councilmember to disqualify his or herself from participating in any appeal or review proceedings before the City Council.
  - b. Except in matters directly involving personal interests, Councilmembers, in their capacity as private residents, should abstain from providing testimony or influencing decisions in matters pending before any City board, commission, committee or task force that will receive, or could potentially receive, future review or other action before the Council. Where a Councilmember elects to provide such testimony, the following rules shall apply:
    - (i) The Councilmember shall declare at the outset and upon the record that the Councilmember is present in his or her private capacity as an interested resident, and not on behalf of or at the request of the City Council.
    - (ii) The Councilmember shall refrain from stating or implying that the Councilmember's position or opinion is that of the City Council.
    - (iii) The Councilmember shall refrain from directing City staff or the advisory body to take any action on behalf of the Councilmember.
    - (iv) The Councilmember shall observe any rules of procedure or protocol that apply to any other private resident testifying before the advisory board.
    - (v) The Councilmember shall disqualify him or herself from participating in the matter should it come before the Council for review and/or decision.

*For additional information regarding The Ethical Hazards of Council Members Attending Other Board Meetings—See Appendix J.*

## ***F. Department Liaisons***

The City Manager oversees the work of all the City departments and appoints a staff liaison from the

appropriate department to help each of the advisory bodies in carrying out their mission. The liaison coordinates all activity between the commission or committee and the City Council.

Advisory body members should report changes in personal information (address, phone number, email, etc.) to the liaison in a timely fashion as important information is sometimes distributed to members on short notice. It is also important for members to inform the liaison of any planned absences in advance of meetings to avoid a lack of quorum.

City advisory body liaisons are assigned from the following departments:

<b>Community Development &amp; Planning</b> Historic Landmarks Committee Planning Commission	<b>822-5955</b>
<b>Engineering Division</b> Boards of Permit Appeals Transportation Safety Committee	<b>822-5957</b>
<b>Environmental Services Department</b> Energy Committee Forest Management Committee Parks and Recreation Committee Wetlands & Creeks Committee	<b>822-8184</b>
<b>Finance Department</b> Transactions and Use Tax Oversight Committee	<b>822-5951</b>
<b>Police Department</b> Public Safety Committee – This function is currently being filled through quarterly reports and an annual plan of public meetings on campus and in the community.	<b>822-2428</b>

*G. Terms of Office*

The terms of office for advisory board members are staggered to avoid a complete change of membership at one time. The lengths of terms are as follows:

Board Members:	Four years
Commission Members:	Four years
Committee Members:	Three years

*H. Officers*

Members of each advisory body elect a chair and vice-chair. Boards elect officers once every four

years. Commissions and committees elect officers annually at the first regularly scheduled meeting of each fiscal year, which begins on July 1.

### *I. City Board, Commission and Committee Members' Roles and Relationships with other City Bodies*

1. Because commissions and boards may at times review the recommendations of other commissions as well as committees and task forces, commissioners and board members shall not be appointed to other City boards, commissions or committees. Commissioners and board members may be appointed to task forces concurrent with their terms of office.
2. In furtherance of the goals set out in 2.8(D)(3), above, to assure public confidence in the decision-making process and avoid the appearance of bias, prejudice, or improper influence, members of boards, commissions, committees and task forces shall observe the following protocol:

- a. Ordinarily the decision of a board, commission, committee or task force is conveyed to other City bodies or the City Council through the designated staff liaison to the City's other boards, commissions, committees, and task forces.

If, however, a board, commission, committee or task force believes its decision requires explanation, or will generate questions by the members of the body to which the decision is being referred, that board, commission, committee or task force may, by formal action of the body, designate one of its members to appear as a representative before the body to which the decision is referred. The designated representative will be allowed to deliver the decision of his or her board, commission, committee or task force and answer questions by participating in the delivery of the staff report to the other body.

- b. When an appointed member of a board, commission, committee or task force elects to provide personal testimony to another City body or the City Council, the following rules shall apply:
  - (i) The member shall declare at the outset and upon the record that the member is present in his or her private capacity as an interested resident, and not on behalf of or at the request of the body to which they are appointed.
  - (ii) The member shall refrain from stating or implying that the member's position or opinion is that of the body to which they are appointed.
  - (iii) The member shall refrain from directing City staff or the body to which they are appointed to take any action on behalf of the member.
  - (iv) The member shall observe any rules of procedure or protocol that apply to any other private citizen testifying before the City bodies or the City Council.
  - (v) Members of boards and commissions who chose to provide personal testimony before other City bodies may be required to disqualify themselves from participating in that

matter should it come before his or her board or commission for review and/or decision if issues of bias would prevent the board or commission from impartial decision-making.

## ***J. Meeting Dates***

Except where noted, all advisory bodies meet on a monthly or bi-monthly basis on days listed below. (Asterisks denote committees that meet in odd months only (Jan., Mar., May, July, Sep., Nov.)

<b>Board/Committee/Commission</b>	<b>Meeting Day</b>	<b>Time</b>
Arcata Foundation	By Call of the Chair	TBA
Boards of Permit & Handicapped Appeals	As Necessary	TBA
City Council	First and Third Wednesday	6:00 p.m.
Energy Committee*	Third Monday	5:30 p.m.
Forest Management Committee *	Second Thursday	7:00 a.m.
Historic Landmarks Committee*	Third Thursday	4:00 p.m.
Parks and Recreation Committee*	Second Wednesday	6:00 p.m.
Planning Commission	Second and Fourth Tuesday	5:30 p.m.
Public Safety Committee	TBA Fourth Wednesday	TBA6:00 p.m.
Transactions and Use Tax Oversight Committee	By Call of the Chair	TBA
Transportation Safety Committee	Third Tuesday	4:30 p.m.
Wetlands and Creeks Committee*	Third Tuesday	5:30 p.m.

## ***K. Annual Reports to the City Council/Study Sessions***

The City Council will schedule study sessions with the different advisory bodies when needed or as requested in writing to the Mayor by the advisory body chair. In addition, each committee and commission is responsible for making an annual report to the City Council on its work activity.

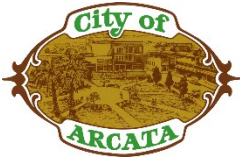
## **2.10—Service on Outside Boards**

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Councilmembers are often requested to serve on outside boards, councils, commissions, or committees. This type of representation serves to facilitate communication and provide interaction with other governmental bodies. The City Council appoints members to some of these groups on an as-needed or as-requested basis.

Councilmembers participating in policy discussions at regional meetings should consider past positions or decisions of the Council. Often outside board decisions require regional opinions to be considered and an appointee is apprised of new information that the Council would not have considered, therefore it is understood that the board appointee will exercise independent decision-making based on the facts and situation at the time of the decision. Councilmembers may speak before other entities outside the City, but should identify whether they are appearing as a representative of the City. Personal positions, when given, will be identified and not represented as the position of the City.

Assignment and direction of staff in relation to regional meetings are at the discretion of the City Manager.



## CHAPTER THREE—Support Provided to City Officials

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### 3.1—Staff/Clerical Support

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Staff and administrative support to City Councilmembers is provided through the City Manager's Office. Secretarial services provided include distributing mail and email, scheduling appointments and receiving messages. All other City Official requests for staff services are made by request to the City Manager or appropriate Department Director who will assign the appropriate staff member. Sensitivity to the workload of support staff is appreciated and turnaround time will vary depending on current work assignments.

### 3.2—Office Equipment

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To enhance City Officials' service to the community and their ability to communicate with staff and the public, the City provides meeting facilities and office equipment for City business.

An iPad will be issued to each Councilmember. The Information Technology Division will ensure all appropriate software is installed and will also provide an orientation in the use of computers and related software. Lost, stolen, or damaged devices must be reported to the Information Technology Deputy Director within one (1) working day of discovery.

A City issued cell phone shall be provided by the City for the Mayor. The Information Technology Division will ensure all appropriate applications and connections are programmed and will also provide an orientation in the use of the phone. Lost, stolen, or damaged devices must be reported to the Information Technology Deputy Director within one (1) working day of discovery.

It is important to note that all letters, memoranda, and interactive electronic communication (email; text) involving City Councilmembers and members of advisory boards and commissions, the subject of which relates to the conduct of government or the performance of any governmental function, with a few exceptions specified in the Public Records Act, are public records.

#### ***A. Business and Personal Use of City Equipment***

The City's electronic equipment and information systems are intended for professional business use by City Officials in the performance of their duties. Personal use of City equipment is prohibited.

#### ***B. Photocopy Machines and Other Equipment***

1. Photocopy Machines. Councilmembers are provided a code number for use of the

photocopier for City business.

2. Other equipment. Except as provided herein, in no event shall a City Official take City property to their home.

### *C. Monitoring, Enforcement and Penalties*

1. City information systems or storage media are the property of the City of Arcata. The City retains the right to access, copy, change, alter, modify, destroy, delete or erase this property without prior notice to City Officials. The City retains the right to monitor and audit email and internet usage. The right to use these technologies does not include the right to privacy.
2. Deleted documents, messages and data may be retrieved from a variety of points in the network. Councilmembers should assume that electronic evidence discovery might recover deleted or unsaved data.
3. City Officials' use of a personal internet account on City equipment, and City Officials' use of a City internet account on personal equipment are to be arranged through the City Manager and are subject to the provisions of this policy. City Officials should be aware that their personal email and electronic files could be reviewed as part of a public records request.

## **3.3—Meeting Rooms**

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City Officials may utilize the meeting space provided in the Transit Center. Use of other meeting rooms, including the conference room located at City Hall, may be scheduled through the City Manager's Office.

## **3.4—Mail Deliveries**

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Members of the City Council receive mail and other materials that are delivered primarily through the use of mailboxes located in the City Council's office. The City Manager's staff disseminates mail to individual Council mailboxes. Staff do not open mail addressed to individual Councilmembers. General correspondence addressed to the Mayor and/or Councilmembers as a whole will be opened and delivered to the Council General Box.

Councilmembers are encouraged to check mailboxes often. In addition, City staff will email, telefax or personally deliver time-sensitive materials to a Councilmember's home or office, if appropriate.



### 3.5—Council Library

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A library of current City plans, implementation programs, and the Arcata Municipal Code is located in the City Council's office. These documents are for reference and are not to be removed from the office. Copies can be made available for individual Councilmembers upon request to the department of origin.

### 3.6—Inappropriate Actions

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The Council has delegated the City Manager the responsibility to discuss, on behalf of the full Council, any perceived or inappropriate action by a Councilmember. The City Manager will discuss with the Councilmember the action and suggest a more appropriate process or procedure to follow. After this discussion, if further inappropriate action continues, the City Manager will report the concern to the Mayor or to the full Council as needed.



Photo courtesy of Humboldt State University





## CHAPTER FOUR—Financial Matters

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### 4.1—Council Compensation

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State law and the Municipal Code provide for payment of a modest honorarium and supplemental benefits to members of the City Council. State law sets the level of compensation (California Government Code § 36516 and Arcata Municipal Code, Title II, Chapter 1, § 2010).

Councilmembers may waive their monthly salaries as provided by state law; however, they may not elect to assign their salary to any person or entity, including a charitable organization.

### 4.2—Budget

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The annual City budget includes appropriations for expenses for Councilmembers to undertake official City business. Funding provided includes membership in professional organizations, attendance at conferences or educational seminars, and purchase of publications and office supplies.

### 4.3—Financial Disclosure

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Candidates for the office of Councilmember and Public Officials appointed to any Commission or Board shall file Statements of Economic Interests (Fair Political Practices Commission Form 700) with the City Clerk together with the candidate's nomination papers (California Government Code §§ 87201 and 87202). Councilmembers must file Statements of Economic Interests (FPPC Form 700) within 30 days of assuming or leaving office, and every year while in office covering the previous 12 months, or the period since the previous statement was filed under Government Code § 87202 or 87203 (California Government Code § 87201–87204). Statements of Economic Interests are available for public inspection.

### 4.4—Travel Policy and Procedures

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The City Council has, by resolution, adopted a travel policy (Appendix C). Councilmembers, staff, and appointed officials will be reimbursed for all “approved travel” as defined in the City Travel Policy only up to the amount of an individual's funds allocated for travel/training. If a Councilmember desires to exceed his or her allocated annual travel budget, prior to travel they may submit a written request to the City Manager for a reallocation of another Councilmember's unused travel balance. The City Manager will confirm that the reallocation is approved by the Councilmember donating the unused budget allocation and that the reallocation is in the best interest of the City.

“Approved Travel” means pre-authorized travel to attend training or conferences, or other City Council-directed travel activities.

### *A. Pre-authorization of Travel/Training*

Councilmembers and appointed officials traveling on City business that involves an overnight stay shall submit a Travel/Training Authorization Form to the City Manager for pre-approval. In advance of making travel arrangements, Councilmembers must check account balances, complete a Travel/Training Authorization Form and make all travel arrangements with the City Manager's Office Executive Assistant. The travel authorization form will include a complete estimate of the costs of the trip, including conference registration, transportation, and per diem. The travel authorization form will also include the purpose of the trip, the dates of travel, and other pertinent details.

In advance of any travel on City business, a Travel/Training Authorization Form must be submitted to and signed by the City Manager. The City Manager authorizes:

- a. Overnight travel by elected or appointed officials
- b. Use of a rental vehicle by elected or appointed officials
- c. Out-of-state travel by elected or appointed officials

### *B. Authorization for Reimbursement of Travel Expenses*

Within 10 days of the close of the authorized travel period, a final itemized Travel/Training Authorization Form, including all receipts and expense reimbursement requests, must be submitted to the City Manager's Executive Assistant, who will prepare for signature by the City Manager, final approval, and processing. The City Manager's Office Executive Assistant will process and submit authorized travel reimbursement requests to the Finance Department.

## **4.5—City Credit Card Policy**

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Card Issuance. The Finance Department issues each Councilmember a City credit card. Use of City credit cards is set forth in the City Credit Card Policy (Appendix D).



## CHAPTER FIVE—Communications

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### 5.1—Overview

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Perhaps the most fundamental role of a Councilmember is communication—communication with the public to assess community opinions and needs; communication to share the vision and goals of the City with constituents; and communication with staff to provide policy direction and to gain an understanding of the implications of various policy alternatives.

Because the City Council performs as a body (that is, acting based on the will of the majority as opposed to individuals), it is important that general guidelines be understood when speaking for the Council. Equally important, when members are expressing personal views and not those of the Council, the public should be so advised.

### 5.2—Correspondence from Councilmembers

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Members of the City Council will often be called upon to write letters to residents, businesses, or other public agencies. Typically, the Mayor will be charged with transmitting the City's position on policy matters to outside agencies on behalf of the City Council. Individual members of the Council will often prepare letters for constituents in response to inquiries, or to provide requested information. City letterhead is available for this purpose and staff can assist in the preparation of such correspondence.

City Council members should never speak on behalf of the City or the Council.

On occasion, members may wish to correspond on an issue on which the Council has yet to take a position or about an issue for which the Council has no position. In these circumstances, members should clearly indicate that they are not speaking for the City Council as a whole, but for themselves as one member of the Council. City letterhead and office support may be utilized in these circumstances.

Councilmembers may occasionally be asked to prepare letters of recommendation for community members seeking employment or appointment. It is inappropriate for Councilmembers to make a recommendation or utilize City letterhead or their Council titles for such letters without approval of the majority of Council.

### 5.3—Local Ballot Measures

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At times, initiatives that affect City Council policy may be placed on the ballot. There are restrictions regarding what actions the City may take on ballot measures. Specifically, state statutes prohibit the City from using its personnel, equipment, materials, buildings, or other resources to influence the outcome of elections. What the City can do is distribute informational reports or pamphlets for the purpose of informing the public of the facts of an issue.

## 5.4—Proclamations

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Proclamations are issued by the City Council as a ceremonial commemoration of an event or issue. Proclamations are not statements of policy. Proclamations are a manner in which the City can make special recognition of an individual, event, or issue.

Proclamations can be directly made if they have been listed on the Council Approved Proclamations List (Appendix E). All proposed proclamations not on the annually approved list must first be approved by the Council during a regular City Council meeting as an item on the Consent Calendar. If the proclamation is expected to be an annual event, the Consent Calendar item description shall include the phrase "and add proclamation to the Council-approved list." The decision to add or not to add a proclamation to the approved list shall be made following consultation between the City Manager and the Mayor when the Council meeting agenda is being prepared. Requests for new proclamations should be directed to the City Manager's Office staff at least four weeks prior to the meeting at which the requestor would like it read.

Proclamations not requested for two years will automatically be deleted from the list of pre-approved proclamations.

## 5.5—California Public Records Act

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To ensure that public disclosure of communications submitted to and by elected and appointed officials complies with the California Public Records Act and the Ralph M. Brown Act (state open meetings laws), the City has adopted the following guidelines:

### *A. Communications, Generally*

All letters, memoranda, and electronic communications involving City Councilmembers and members of boards, commissions, committees and task forces, containing information relating to the conduct of the public's business may be public records and subject to public disclosure, with a few exceptions as outlined in the Public Records Act. Public requests for copies of such communications are initiated with the City Clerk, who has a system for processing such requests.

### *B. Written Communications*

Written letters and memoranda received by the City referring to a specific agenda item, addressed to a Councilmember or the Council as a body, will be provided to all City Councilmembers and the public, and a copy kept according to the City's Records Retention Schedule.

### *C. Electronic Communications*

1. Informal messages that do not contain information relating to the conduct of the public's business and are not prepared, owned, used, or retained by the City do not constitute a public record. Users should delete these messages once their administrative purpose is served.
2. All other messages that relate to the conduct of the public's business constitute a public record. Such records are subject to public inspection and copying unless specifically exempted from disclosure; users may either print a copy of the record and create hard copy file for retention according to the City's Records Retention Schedule, or create an electronic subject folder to retain it in accordance with the City's Records Retention Schedule.
3. Email communications that are intended to be shared among three or more Councilmembers, whether concurrently or serially, must be considered in light of the Ralph M. Brown Act (state open meetings act). If the intended purpose of the email is to create a collective concurrence, the electronic discussion should not occur.
4. Email should be used cautiously when seeking legal advice or to discuss matters of pending litigation or other "confidential" City business. In general, email is discoverable in litigation, and even deleted email is not necessarily removed from the system. Confidential email communications should not be shared with individuals other than the intended recipients or the attorney-client privilege protecting the document from disclosure may be waived.
5. Email between Councilmembers and between Councilmembers and staff shall not be transmitted to the public or news media without the submission of a public records request with the City Clerk.
6. Email shall not be used for personal use since Councilmembers' conventional email addresses include the City's "return address."
7. Electronic communications that meet the California Public Records Act definition of a public record made to or from a Councilmember's privately owned device(s) may be subject to public disclosure.
8. Electronic communications during a public meeting are strongly discouraged because they prohibit the public from observing or participating in the Council's public discussion and may violate the Brown Act.



## CHAPTER SIX—Conflicts and Liability

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### 6.1—Ethics, AB 1234 Ethics Training

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The City maintains a commitment to conducting business according to the highest achievable ethical standards. Recognizing that ethical dilemmas may arise and that public officials must make difficult choices after careful consideration of competing public, personal and/or private interests at stake, the Council has adopted a code of ethical conduct which is attached as Appendix F.

The City Manager is subject to a professional code of ethics as a member of the International City/ County Management Association (ICMA). These principles appear in the appendix of this manual, as Appendix G. It should be noted that this code binds the City Manager to certain practices that are designed to ensure actions are in support of the City's best interests. Violations of such principles can result in censure by the ICMA.

State law (California Government Code § 53235, *et seq.*) requires public officials to complete two hours of training in ethics principles and laws every two years. In addition to Councilmembers, Arcata requires the training of all Planning Commissioners, its City Manager, its department directors, and some of its mid-managers. Additionally, the City Council encourages all committee and board members to complete the training. Biennial ethics training is provided locally. Alternatively, the League of California Cities offers AB 1234 training, often in conjunction with League conferences or other training workshops, and online training is offered through the Fair Political Practices Commission. Certificates of course completion are kept on file by the City Clerk.

### 6.2—Conflicts of Interest

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There are numerous sources of conflicts of interest that may require a Councilmember to disqualify himself or herself from participating in decision-making. The Political Reform Act controls financial conflicts of interest of public officials. The Political Reform Act is one of the most complicated laws affecting local government. This law is implemented and enforced by the Fair Political Practices Commission (FPPC) which has issued comprehensive implementing regulations. To understand the PRA's impact on a Councilmember's actions, it is suggested that members discuss the law and potential conflicts with the City Attorney or a private attorney.

In general, under the PRA, public officials are prohibited from making, participating in or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest (California Government Code § 87100). A "public official" is defined as including every member, officer, employee or consultant of the state or local government agency (California Government Code § 82048).

## A. *Applicability*

Under the PRA, an official has a financial interest if it is reasonably foreseeable that a decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

1. Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more (California Government Code § 87103(a); 2 California Code of Regulations § 18700(c)(6)(A)).
2. Any real property in which the public official has a direct or indirect interest worth \$2,000 or more (California Government Code § 87103(b), 2 California Code of Regulations § 18700(c)(6)(B)).
3. Any source of income other than gifts or certain loans aggregating \$500 or more provided to the public official within 12 months prior to the time of the decision (California Government Code § 87103(c); 2 California Code of Regulations § 18700(c)(6)(C)).
4. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management (California Government Code § 87103(d); 2 California Code of Regulations § 18700(c)(6)(D)).
5. Any gift totaling \$470 (adjusted biennially by the FPPC) or more provided to, received by or promised within 12 months prior to the decision (2 California Code of Regulations §§ 18703.4, 18704-18961).

## B. *Analysis*

In general, the FPPC suggests that a four-part analysis be followed in applying the conflict-of-interest rules:

1. *Step One: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the financial interests listed above (2 California Code of Regulations § 18700(d)(1))?* If the financial interest is a named party to or the subject of the governmental decision, the financial effect on the public official's interest is reasonably foreseeable. If not a named party or subject of the decision, the financial effect on the interest will be reasonably foreseeable if there is a realistic probability of a financial effect.
2. *Step Two: Will the reasonably foreseeable financial effect be material (2 California Code of Regulations § 18700(d)(2))?* Materiality is determined in reference to the specific financial interest involved.
3. *Step Three: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from the effect on the public generally (2 California Code of Regulations § 18700(d)(3))?* This requires establishing that at least 25% of certain

population segments are all affected, and that the effect on the governmental official's interest is not unique compared to the segment.

4. Step Four: *If after applying the three step analysis and determining that the public official has a conflict of interest, they may not make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision.*

### **C. Conflict of Interest Code**

The City is required to adopt and maintain a Conflict of Interest Code. This code is found in the Arcata Municipal Code at Title 2, Chapter 8. Under state law, the code must be reviewed every two years and amended as circumstances change. The City's code must be consistent with minimum requirements of the Political Reform Act (California Government Code §§ 87300-87313).

### **D. Disqualification and Disclosure**

When the agenda item is called, a City Councilmember who has a conflict of interest is required to publicly state that a conflict of interest exists, describe the nature of the economic interest giving rise to the conflict, disqualify himself or herself, and leave the room. Ideally, Councilmembers will become familiar enough with the sources of conflicts to determine in advance whether disqualification is necessary. However, if a Councilmember becomes aware of a potential conflict only during the meeting, it is perfectly appropriate for the Councilmember to ask for a break in order to discuss the matter with the City Attorney. If any Councilmember questions a potential conflict of interest related to another Councilmember, a recess may be called at the request of the Councilmember who may have a conflict to allow discussion of the issue with the City Attorney to determine if there is a conflict. If the Councilmember decides a conflict exists, that Councilmember may not participate in any aspect of the decision making, including discussing the matter with City staff. When a conflict of interest arises involving a matter on the consent calendar portion of the agenda, the Councilmember is not required to leave the room, unless that item is pulled from the consent agenda for separate discussion.

### **E. Legally Required Participation**

In the event that a decision cannot be made because a majority of the Council is disqualified due to conflicts of interest, the PRA allows the minimum number of Councilmembers necessary to constitute a quorum to return and participate in the decision to the minimum extent required. The Councilmembers permitted to participate must be chosen through a random process (California Government Code § 87101).

### **F. Advice on Conflict of Interest**

The City Attorney may provide advice to a Councilmember about the existence of a conflict of interest. However, advice given by the City Attorney does not protect the Councilmember from an enforcement action by the FPPC. A Councilmember may seek a formal written opinion from the Fair



Political Practices Commission on a particular set of facts. Such an opinion letter would provide protection from an enforcement action arising under the same set of facts.

### *G. Other Sources of Conflict*

In addition to the Political Reform Act, state law prohibits Councilmembers from entering into contracts with the City. (California Government Code § 1090) In general, this type of conflict is not subject to remedy through the disqualification of the interested Councilmember but must instead be entirely avoided by the Council. There are, however, numerous exceptions to this provision that would allow the Council to enter certain contracts after disqualification of the interested Councilmember, and those should be reviewed with the City Attorney on a case-by-case basis (California Government Code § 1090).

### *H. Incompatibility of Offices*

In general, California law prohibits public officials from simultaneously holding more than one public office when the functions or responsibilities of the two offices have the potential for overlapping. This prohibition arises from a concern over the potential clash of two public offices held by a single official with potentially overlapping public duties. The Legislature may, however, expressly authorize through legislation the holding of two offices notwithstanding the fact that the dual holding would otherwise be prohibited. For example, the Legislature has exempted local agency formation commissions, the Coastal Commission, joint powers agencies, and transportation corridor agencies.

### *I. Revolving Door Policies*

For a period of one year after leaving office, state law prohibits Councilmembers and chief administrators from acting as an agent or attorney for any other person by appearing formally or informally, orally or in writing, before the Council or any of its commissions, or committees if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance of, amendment to, award of, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property (California Government Code § 87406.3).



## CHAPTER SEVEN—Interactions with City Staff

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### 7.1—Overview

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City Council policy is implemented through dedicated and professional staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so policies and programs may be implemented successfully. To support effective relationships, it is important that roles are clearly recognized.

### 7.2—Council-Manager Form of Government

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Arcata has a Council-Manager form of government. Basically, with this structure, the City Council's role is to establish City policies and priorities. The Council appoints a City Manager to implement those policies and undertake the administration of the organization.

The City Manager is appointed by the City Council to enforce its laws, to direct the daily operations of City government, to prepare and monitor the principal budget, and to implement the policies and programs initiated by the City Council. The City Manager is responsible to the City Council, rather than to individual Councilmembers, and directs and coordinates the various departments. The City Manager is responsible for appointing all department directors and authorizing all other personnel positions. The City Council authorizes positions through the budget process; based upon that authorization, the City Manager makes the appointments.

The Council-Manager form of government is outlined in the California Government Code. The powers and duties of the City Manager include:

- Generally, supervise over the administrative affairs of the City
- Appoint and remove at any time any department directors and employees
- Attend all meetings of the Council at which the Manager's attendance may be required by that body [Arcata Municipal Code. § 2107(d)]
- See that all laws and ordinances are faithfully executed, subject to the authority which the Council may grant the Mayor to maintain law and order in times of emergency
- Recommend for adoption by the Council such measures as the Manager may deem necessary or expedient
- Prepare and submit to the Council such reports as may be required by that body, or as deemed advisable to be submitted
- Keep the Council fully advised of the financial condition of the City and its future needs
- Prepare and submit to the Council a proposed budget for the fiscal year, and be responsible for its administration upon adoption

- Perform such other duties as the Council may determine by ordinance or resolution
- Implement and administer City Council policy

## 7.3—Non-Interference by City Council

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The City Council is to work through the City Manager when dealing with administrative services of the City.

In no manner, either directly or indirectly, shall a Councilmember become involved in, or attempt to influence, personnel matters that are under the direction of the City Manager. No member of the Council shall, by suggestion or otherwise, attempt to influence or coerce the City Manager concerning appointments to City offices or employment. Nor shall the City Council be involved in, or influence, the purchase of any supplies beyond the requirements of the City's procurement code/procedures.

Except for the purpose of inquiry, the Council and its members will deal with the administrative service solely through the City Manager or designee, and neither the Council nor any commission, committee or member of a board shall give an order to, try to influence, coerce or direct, either formally or informally, any subordinate of the City Manager.

The City Council delegates to the City Manager the responsibility to discuss with any Councilmember, on behalf of the full Council, any perceived or inappropriate interference or encroachment of administrative services. The City Manager will discuss with the Councilmember the action and suggest a more appropriate process or procedure to follow. If inappropriate action continues after this discussion, the City Manager will report the concern to the full Council. The Council, on a case-by-case basis, will establish what, if any, corrections and/or sanctions are appropriate.

## 7.4—City Council/City Manager Relationship

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The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive of the City. All dealings with the City Manager, whether in public or private, should respect the authority of the City Manager in administrative matters. Disagreements should be expressed in policy terms, rather than in terms that question satisfaction with or support of the City Manager.

The City Manager respects and is sensitive to the policy responsibilities of the City Council and acknowledges that the final responsibility for establishing the policy direction of the City is held by the City Council.

### *A. Performance Evaluation*

The City Council is to evaluate the City Manager on an annual basis to ensure that both the City Council and City Manager are in agreement about performance and goals based upon mutual trust and common objectives. The City Manager's performance is evaluated in the following areas: Leadership, teamwork, job knowledge, attitude, accountability, empowerment, communication, problem-solving skills, quality of service, safety/risk-taking, implementation and administration of adopted Council policy.

## 7.5—City Council/City Staff Relationship

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City Councilmember contact with City staff members, in respect of staff's personal time will be during regular business hours and through City standard forms of communication (email, phone and appointment), except in the case of an emergency. Unless matters are urgent, communications outside of normal working hours are not expected to be responded to immediately.

## 7.6—City Council/City Attorney Relationship

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Pursuant to recommendation of the City Manager, the City Council shall make provision for obtaining legal counsel for the City, either by appointment of a City Attorney on a full-time or part-time basis, or by any reasonable contractual arrangement for such professional services. The City Attorney is a contract employee appointed by the City Council. The City Attorney is the legal advisor for the Council, its committees, commissions and boards, the City Manager, and all City officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the City. The general legal responsibilities of the City Attorney are to:

1. Provide legal assistance necessary for formulation and implementation of legislative policies and projects;
2. Represent the City's interest, as determined by the City Council, in litigation, administrative hearings, negotiations, and similar proceedings;
3. Prepare or approve as to form ordinances, resolutions, contracts, and other legal documents to best reflect and implement the purposes and intentions of the City Council; and
4. Keep City Council and staff apprised of court rulings and legislation affecting the legal interests of the City.

It is important to note that the City Attorney does not represent individual members of the Council, but rather the City Council as a whole. Accordingly, with the exception of conflict-of-interest inquiries, in questions involving pending or upcoming matters, or protocol and procedure, the City Attorney's services are engaged and directed through the majority of the Council. Individual Councilmembers may seek advice or assistance from the City Attorney on other matters while exercising their best judgment on the most efficient and appropriate use of his/her resources. The City Attorney's performance is reviewed as provided by the services retention contract.

## 7.7—Roles and Information Flow

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### A. *Council Roles*

The full City Council retains the authority to accept, reject, or amend the staff recommendation on policy matters.

Members of the City Council must avoid intrusion into those areas that are the responsibility of staff. Individual Councilmembers may not intervene in staff decision making, the development of staff recommendations, scheduling of work, and executing department priorities without the prior knowledge and approval of the City Council as a whole. This is necessary to protect staff from undue influence and pressure from individual Councilmembers, and to allow staff to execute priorities given by management and the Council as a whole without fear of reprisal. If a Councilmember wishes to influence the actions, decisions, recommendations, workloads, work schedule, or priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy.

### B. *Access to Information*

The City Manager is the information liaison between the Council and City staff. Requests from Councilmembers for information are to be directed to the City Manager and will be responded to promptly. The information requested will be copied to all members of the Council so that each member may be equally informed. The sharing of information with the City Council is one of the City Manager's highest priorities.

There are limited restrictions controlling when information cannot be provided. The City is legally bound not to release certain confidential personnel information. Likewise, certain aspects of police department affairs (e.g., access to restricted or confidential information related to crimes) may not be available to members of the City Council.

### C. *Staff Roles*

The Council recognizes the primary functions of staff as executing Council policy and actions taken by the Council, and keeping the Council informed. Staff is obligated to take guidance and direction only from the City Manager or Department Director. This direction follows the policy guidance of the City Council as a whole. Staff is directed to reject any attempts by individual Councilmembers to unduly direct or otherwise pressure them into making, changing, or otherwise influencing recommendations.

City staff will make every effort to respond in a timely and professional manner to all requests for information or assistance made by individual Councilmembers provided that, in the judgment of the City Manager, the request is not of a magnitude, either in terms of workload or policy, that it would be more appropriately assigned to staff through the direction of the full City Council.

## 7.8—Dissemination of Information

---

In addition to regular, comprehensive memoranda written by the City Manager directly to the City Council concerning all aspects of City operations (exclusive of confidential personnel issues), all Councilmembers receive copies of all correspondence received by the City Manager that will assist them in their policy-making role. The City Manager also provides other documents to the Council on a regular basis, such as status reports, executive summaries, and agendas of all City commission and committee meetings and weekly senior staff meetings.

A variety of methods are used to share information with the Council. Workshops and study sessions are held to provide detailed presentations of matters. The City Manager's open-door policy allows individual Councilmembers to meet with the Manager on an impromptu or one-on-one basis.

## 7.9—Magnitude of Information Request

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Any information, service-related needs, or policy positions perceived as necessary by individual Councilmembers that cannot be fulfilled based upon the above guidelines should be considered as an item for the agenda of a City Council meeting. If so directed by an action of the Council, staff will proceed to complete the work within a Council-established timeline.

## 7.10—Staff Relationship to Advisory Bodies

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Staff support and assistance may be provided to the City's boards, commissions, committees and task forces. These bodies, however, do not have supervisory authority over City employees. While staff may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and, ultimately, the City Manager. The members of the commissions, boards, or committees are responsible for the functions of the advisory body. The chairperson is responsible for committee compliance with the municipal code and/or committee bylaws. Staff members are to assist the advisory body chair to ensure appropriate compliance with state and local laws and regulations.

Staff support includes: (1) preparation of a summary agenda and appropriate notice after approval by the chairperson; (2) preparation of reports providing a brief background of the issues, a list of alternatives, recommendations, and appropriate backup materials, if necessary; and (3) preparation of minutes of advisory body meetings. Advisory body members should have sufficient information to reach decisions based upon a clear explanation of the issues.

Advisory bodies wishing to communicate recommendations to the City Council shall do so through adopted Council agenda procedures as outlined in § 8.06(B) of this manual. In addition, when an advisory body wishes to correspond with an outside agency, correspondence shall be reviewed and approved by the City Council.

## 7.11—Restrictions on Political Involvement by Staff

---

Arcata is a nonpartisan local government. Professional staff formulates recommendations in compliance with Council policy for the good of the community, not influenced by political factors. For this reason, it is very important to understand the restrictions of political involvement of staff.

By working for the City, staff members do not surrender their right to be involved in political activities. Employees may privately express their personal opinions. They may register to vote, sign nominating or recall petitions, and they may vote in any election.

## 7.12—Council Attendance Policy

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If a Councilmember intends to be absent from the City for more than 24 hours, they shall notify the City Manager of such absence and its duration.

### A. *Vacancy for Nonattendance*

Under state law, if a Councilmember is absent without permission from all regular City Council meetings for 60 days consecutively from the last regular meeting they attended, their office becomes vacant and shall be filled as any other vacancy [California Government Code § 36513(a)].

At the start of each City Council meeting, the City Clerk, or designee, will call the roll. Any absent Councilmember who has called the Mayor or City Manager's Office before 5:00 p.m. on the day of the meeting to advise of such absence may request to be excused by the City Council.



Arcata City Hall





## CHAPTER EIGHT—City Council Meetings

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The City Council's collective policy and law-making powers are put into action at the Council meetings. It is here that the City Council conducts its business. The opportunity for citizens to be heard, the availability of local officials to the residents, and the openness of Council meetings all lend themselves to the essential democratic nature of local government.

### 8.1—Meeting Schedule

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Regular City Council meetings are held the first and third Wednesdays of each month at 6:00 p.m., in the Council Chamber, 736 F Street, Arcata. By a majority vote of the Council, meetings not completed by 10:30 p.m. will be continued to the following Thursday at 6:00 p.m. in the Council Chamber.

### 8.2—Public Notice of Meetings and Hearings

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Pursuant to the California Government Code, cities are charged with establishing a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. The procedure followed by the City of Arcata is as follows:

#### *A. Notices*

Except where a specific means of notifying the public of a public hearing is otherwise provided by law or ordinance, notice of upcoming public hearings before the City Council or the City's boards and commissions shall be given by one publication of a notice containing the time, place, date, subject, and body before whom the hearing is to be held, in the City's official newspaper consistent with state law.

#### *B. Preliminary Agenda for City Council Meeting*

The public shall be notified of the agenda for the forthcoming regular City Council meeting by the posting of a copy of the agenda in the following public places in the City at least 72 hours in advance of a regular meeting and 24 hours in advance of a special meeting:

- Bulletin Board Outside the F Street Entrance to Arcata City Hall  
736 F Street  
Arcata, California 95501
- On the City's Website at [www.CityofArcata.org](http://www.CityofArcata.org)



A copy of the agenda will also be made available to the public as follows:

- Arcata Branch, Humboldt County Library

### *C. Duties of City Clerk*

The City Clerk is directed to publish notices and post agendas as required by § 8.2 of the Arcata City Council Protocol Manual and the California Government Code.

## 8.3—Emergency Meetings

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State Law permits the Council to hold an emergency meeting without providing advance 24-hour notice when prompt action is necessary due to the disruption or threatened disruption of public facilities during an emergency situation. Emergency situations are those matters immediately affecting the public health, safety and welfare of the community (California Government Code § 54956.5).

## 8.4—Special Meetings

---

Special meetings may be called by the Mayor or by the Vice-Mayor or Acting Mayor in the absence of the Mayor. Additionally, a majority of the members of the Council may call a special meeting, provided that the majority has not engaged in substantive consideration of the proposed special meeting agenda item(s) at a non-noticed meeting. Generally, the City Clerk will prepare a notice of special meeting to be signed by the Mayor, or all members of the majority, calling the special meeting, and will provide written notice at least 24 hours in advance to each member of the Council, local newspaper of general circulation, and radio or television station which has on file with the City a written request to be notified of special meetings. The special meeting notice will also be posted on the City's website. The call and notice shall specify the time and place of the special meeting and the business to be transacted.

The notices provided in this section may be dispensed in the event a meeting is called to deal with specified types of extreme emergencies when prompt action is necessary due to the disruption or threatened disruption of public facilities.

At all regular and special meetings, public comment is invited during a public hearing before or during consideration of any item on the agenda. Public comment is appropriate on any matter within the jurisdiction of the City Council.

The California Government Code addresses the subject of special meetings. For special meetings, only those items specifically listed on the agenda may be discussed, considered, or decided.

## 8.5—Study Sessions

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The City Council may meet informally in a study session. The study session is the forum used by the Council to review forthcoming programs of the City, to receive progress reports on current issues, or to receive similar information from the City Manager and others.

All discussions and conclusions held during a study session are of an informal nature. Although no final action is taken while in a study session, a majority of the Council may give City staff preliminary directions on what to bring back to the Council for later consideration. Such direction given at a study session does not in any way obligate a Councilmember to vote in a particular way if the item is later brought back to the Council for further review.

## 8.6—Placing Items on the Agenda

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### *A. City Council Agenda Planning*

1. Council members shall have the opportunity to request an item be placed on the agenda during an open Council meeting and with concurrence of at least one other Councilmember, the request shall be honored.
2. Any Councilmember may request that an item be placed on a City Council agenda by submitting a written request to the City Manager and current Mayor. The written should include:
  1. A summary of the information that will be presented to the City Council;
  2. A concise statement of the specific action the City Council will be asked to take on the item; and,
  3. A statement of the reasons why the requesting party believes it is appropriate and within the jurisdiction of the City Council to consider this subject matter and to take the requested action.

All requested items are reviewed by the Mayor and the councilmember assigned to agenda setting meeting and placed on an agenda as soon as reasonable time is available.

### *B. Advisory Bodies and Civic Organizations*

Advisory bodies of the City Council and other civic agencies (e.g., Chamber of Commerce, Humboldt Film Commission) may submit items for Council consideration by submitting a written request, as outlined in paragraph A. *City Council Agenda Planning* above, to the City Manager or City Clerk at least 15 working days prior to the meeting, to be considered by the Mayor and City Manager for placement on an agenda.

### *C. Members of the Public*

A member of the public may request an item be placed on a future agenda while addressing the City Council during a regular meeting. If the issue is placed on the agenda, the City Clerk will notify the requester so that they may plan to attend the meeting.

#### *D. Emergency or Other Items Added to the Agenda*

Emergency items may be added to an agenda in accordance with state law. The reason(s) for adding an emergency item to the agenda shall be announced publicly at the meeting, and the issue shall be included in the minutes of the meeting. Adding emergency items to an agenda at the meeting requires a 4/5ths vote by the Council after determining that there is need to take immediate action and that the need for action came to the City's attention after posting of the agenda [California Government Code § 54954.2(b)].

## 8.7—Development of the Agenda

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Staff is required to submit a staff report for each topic of discussion on the City Council agenda. The deadline for submitting these reports and documentation is 3:00 p.m. on Wednesday of the week prior to the date of the meeting for which the item is scheduled.

The agenda packet will usually be available for the Councilmembers, staff, public and media on the Friday prior to the Council Meeting.

### 8.7.1—Public Comments During the Meeting

---

All writings, documents, or electronic communications relating to any item on the agenda, received after distribution of the Council agenda packet and prior to the Council meeting, shall be distributed to the entire City Council and made available for public inspection during normal business hours at Arcata City Hall (California Government Code § 54957.5).

After the Council has had an opportunity to discuss an item and ask questions of staff and presenters, the Mayor will call for public comment. The public speaker's role is to provide additional information focused on the item being considered that will assist the Council in making its final decision on the matter. Speakers providing writings or documents to the City Council during the Council meeting are asked to present at least eight (8) copies to the City Clerk for distribution and to retain for the meeting record.

The City's basic standard is to provide three (3) minutes per speaker for all business items.

- The Mayor may modify the amount of time members of the public are allocated for individual comments, depending on the number of speakers. They may limit the number of speakers and/or the time each speaker can speak.
- A change to the amount of time allocated for individual comments on a particular agenda item or during a particular comment period will apply equally to all speakers during that agenda item or comment period.

- Members of the public may not cede time for comments to other members of the public.

## 8.8—Video/DVD, Web Streaming and Audio Recording of Meetings

---

City Council meetings, except study sessions, some special meetings and those meetings or portions of meetings conducted in closed session pursuant to the California Government Code, are broadcast live over several platforms. Digital video files are kept for the sole purpose of being able to rebroadcast the meetings on the Community Access Channel and web meetings are archived on the City's website. Both forms of broadcast meetings are for the convenient viewing by Arcata residents, are not the permanent record of City Council proceedings, and are only retained consistent with state law.

## 8.9—Order of Business

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The Mayor, or in the Mayor's absence the Vice-Mayor, presides over all meetings of the City Council, and after determining that a quorum is present, calls the meeting to order. In the absence of the Mayor and Vice-Mayor, the City Clerk shall call the Council to order, whereupon temporary Mayor Pro-tem shall be elected by the members of the Council present.

### *I. Land Acknowledgment*

### *II. Flag Salute*

Those in attendance are asked to join the Council in reciting the Pledge of Allegiance.

### *III. Roll Call*

The City Clerk, or designee, takes roll and announces the presence or absence of individual Councilmembers.

### *IV. Ceremonial Matters*

Requests for proclamations, other than those listed on the Council-approved list, will be approved by the Mayor through the agenda setting process.

### *V. Reports by Commission/Committee*

At this time, the Council may receive a report from a City commission or committee.

## *VI. Council and Staff Reports*

All reports shall be specifically limited to items relating to City business and shall not request or lead to action by the Council at this meeting.

## *VII. Oral and Written Communication [Early -Time Limited]*

This 15-minute time period is provided for people to address the Council on matters not on the agenda. Speakers addressing the Council during this time may be limited to two minutes. This item is continued through item XIII where speakers are allotted 3 minutes at the end of the meeting. Speakers may elect to speak during either time slot but as one agenda item speakers may only speak during one Oral Communications period.

## *VIII. Meeting of the Successor Agency to the Community Development Agency*

At this time the City Council presides as the governing body for the Successor Agency to the Community Development Agency of the City of Arcata in accordance with Health and Safety Code Section 34172(d)(1) and City of Arcata Resolution No. 112-10.

## *IX. Consent Calendar*

All matters on the Consent Calendar are considered to be routine by the City Council and are enacted on one motion. If discussion is required, that item is removed from the Consent Calendar and considered separately. At the end of the reading of the Consent Calendar, Councilmembers may remove an item. Members of the public may comment on any items remaining on the consent calendar in the comment period before the vote.

## *X. Items Removed from the Consent Calendar*

Items removed from the Consent Calendar are heard at this time.

## *XI. Old Business*

## *XII. New Business*

## *XIII. Oral and Written Communications [continued]*

This time is provided for people to address the Council or submit written communications on matters not on the agenda. At the conclusion of all oral communications, the Council may respond to statements. Any request that requires Council action will be set by the Council for a future agenda or referred to staff. Speakers addressing the Council may be limited to three minutes, and a time limit on the overall length of Oral Communications may be imposed.

#### *XIV. Dates of Future Meetings and Future Agenda Items*

#### *XV. Closed Session:* Litigation, Personnel and/or Real Estate

#### *XVI. Closed Session Reports*

#### *XVII. Adjournment*

The City Council makes every attempt to end meetings by 10:30 p.m. If there are new business items started after 10:30 p.m. the Mayor will check in with the Council to confirm there is interest to take up the new item(s) while considering if members of the public are still waiting to comment or if they have lost members of the public from the meeting planning on making public comment on the item(s).

### 8.10—Council Action

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The City Council exercises legislative authority through a simple motion, an amendment to a motion, adoption of a resolution, or adoption of an ordinance. Depending on the item, staff reports will generally attempt to present appropriate motions, with options, for the Council to make. The City Council is encouraged to review the staff recommendations and use presented options as a template when making a motion. In most situations, a majority of the members' present is adequate to adopt a motion, however this is not always the case, and staff will advise the Council when either a super majority or majority of the entire body is required. In addition, in most situations a voice vote is all that is required for Council action; however, staff will advise the Council when a roll call vote is required. Motions should be concise and give clear directions to staff.

Although finality in action is an important principle in government, there may be occasions when the Council wishes to reconsider a motion it has previously passed. In such circumstances, a motion to reconsider may be made either at the meeting where the item was first voted upon, or at the very next meeting of the Council. A motion to reconsider brought forward at the following meeting of the Council will require proper notice on the agenda. A motion to reconsider an item previously voted on can be made only by a Councilmember who voted in the majority.

### 8.11—Legislative and Quasi-Judicial Actions of the Council

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The Council can take both legislative and quasi-judicial action. In general, the Council acts in a legislative capacity when it takes action to adopt policies, plans, and ordinances of general application. In these situations, a Councilmember may rely on any information they lawfully obtain when participating in a decision-making process. In contrast, the Council will also act in a quasi-judicial capacity when it acts on matters that implicate constitutionally protected property and liberty interests. These types of actions generally involve land use entitlements and other types of permits, licenses, etc.

The distinction between legislative and quasi-judicial activity is especially important because of the rights that are given to the applicant. Specifically, an applicant in a quasi-judicial matter is entitled

to due process of the law. This includes a right to have a decision made on the record by a fair and impartial Council. In order to ensure these rights are satisfied, the Council must disclose all ex parte communication it receives; that is, information or evidence a Councilmember obtains from outside the Council hearing on the matter. Additionally, Councilmembers may be called upon to answer questions about potential bias.

## 8.12—General Parliamentary Procedure

---

Parliamentary procedures set the agreed-upon standard for conducting business. For general guidance, the Council will follow Rosenberg’s Rules of Order, attached as Appendix H. Certain processes are subject to state code and must be complied with. The Council will accept directions from the City Manager, City Clerk and the City Attorney on the code. When necessary to resolve issues that may arise over the process, the Mayor will refer to the City Attorney and/or City Manager who will act as the Parliamentarian. Upon such advice, the Council will vote and follow the decision of the majority.

## 8.13—Presentations at Meetings

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Presentations are not allowed during Oral and Written Communications. The Mayor may establish reasonable time restrictions on presentations from members of the public that take into consideration the complexity of the subject matter, the number of other members of the public wishing to address the Council, and the number of other items on the agenda to which the Council must attend. Members of the public who wish to utilize electronic media in their presentations must coordinate in advance with the City Manager or his/her designee. The City Manager may establish reasonable rules on the public’s use of electronic media, to minimize disruption of Council meetings, including the requirement of advance notice and/or submission of presentation data to ensure all compatibility issues are resolved before the Council meeting. Electronic media presentations are subject to time restrictions as established by the Mayor. Subject to any electronic media presentation rules established by the City Manager, the public may use the City’s projector in the Council Chamber to assist in making their electronic presentations.



Photo courtesy of Chris Santos

## 8.14—Meeting Decorum

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Meetings of the City Council shall be conducted in an orderly manner to ensure that the public has a full opportunity to be heard and that the deliberative process of the Council is retained. Pursuant to California Government Code section 36813, the City Council may establish rules for the conduct of its proceedings. The Mayor may establish reasonable time restrictions on presentations from members of the public that take into consideration the complexity of the subject matter, the number of other members of the public wishing to address the Council, and the number of other items on the agenda to which the Council must attend.

- **Councilmembers and City Officials:** Members of the City Council shall not by conversation or other means delay or interrupt the Council proceedings or disrupt any other member while speaking. Councilmembers shall fully participate in public meetings, in both the open and closed sessions, while demonstrating respect and courtesy to others. City Officials shall stay focused, stay on topic and act efficiently during public meetings. They shall refrain from interrupting other speakers or otherwise interfering with the orderly conduct of the meetings.
- By a majority vote, councilmembers may admonish, reprimand, or censure other Councilmembers or any other City official for egregious violation of civil norms or other misconduct, as further elucidated below.
- “Admonishment” means a formal reminder of the rules and is appropriate for allegations of a violation of law or City policy. An admonishment is not disciplinary in nature. “Reprimand” means a formal reminder that is appropriate when the Council finds that a Councilmember has committed misconduct but determines that the misconduct does not rise to the level of requiring censure. “Censure” means a formal resolution to reprimand an individual Councilmember for misconduct and is a disciplinary action. Any City official facing admonishment, reprimand, or censure must be given notice and opportunity to respond to the accusation. The Council can limit by a super majority vote a member’s assigned positions to liaison or council leadership positions.
- **Persons Addressing the Council.** Public comment communications are opportunities for the public to formally address the Council as a whole, for matters that are on the agenda or those that cannot be handled during regular working hours of the City government. Comments shall be made in an orderly manner and shall not include personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public. Commenters shall wait patiently in the designated area for their turn to speak.
- **Audience Members.** Audience members shall not engage in disorderly or boisterous conduct including the utterance of loud or threatening / abusive language, whistling, stamping of feet, cheering or jeering, excessive clapping or snapping which disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting.
- Per California Government Code section 54957.95, Mayor, or presiding officer of a non-City Council meeting, or their designee may remove, or cause the removal of, an individual for disrupting the meeting.

Prior to removing an individual, the presiding member or their designee shall warn the individual that



their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to: a failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to any law; and engaging in behavior that constitutes use of force or a true threat of force. A “True threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

Members of the public are permitted to bring signs to public meetings as long as they remain in the designated sign area and do not block anyone’s view of the meeting. Commenters may not bring signs into the waiting area for public comment.

Councilmembers and other City Officials are discouraged from wearing political attire or bringing political signs to City Council Meetings, in order to preserve the public’s faith in a non-partisan local government.

For strategies on maintaining efficient and orderly council meetings see Appendix K: *Dealing with Disruptions at Public Meetings. Legal and Practical Considerations*. Renne Sloan Holtzman Sakai LLP report to the League of California Cities, 2015.



Photo courtesy of Britton Latham



## CHAPTER NINE—Protocol Administration

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### 9.1—Biennial Review

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The City Council will review and revise the City Council Protocol Manual as needed. The City Council will specifically review/revise, the Protocol Manual every July following a City Council election.

### 9.2—City Attorney as Protocol Advisor

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The City Attorney and/or City Manager shall assist the Mayor and serve as an advisor for interpreting the City Council's adopted Protocol Manual.

### 9.3—Applicability of Protocol Manual

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The City Council Protocol Manual shall apply when the Council is sitting as another entity or agency. When sitting as another entity, the role of Mayor and Vice-Mayor shall be interchangeable with the Chair and Vice-Chair, or President and Vice-President.



Photo courtesy of Humboldt State University



## City Council Protocol Manual--APPENDIX

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## **APPENDIX**

### **A— List of City Plans**

## CITY OF ARCATA PLANS

## CITY MANAGER'S OFFICE

CITY PLAN	MANDATED	SOURCE OF MANDATE	ADOPTED	REVISION
Injury and Illness Prevention Program (IIPP)	Yes	State (SB 198) CalOSHA	1991	Under Revision

## POLICE DEPARTMENT

CITY PLAN	MANDATED	SOURCE OF MANDATE	ADOPTED	REVISION
City of Arcata Emergency Operations Plan	Yes	State OES / FEMA	2008, 2021	Mandated

## ENGINEERING DEPARTMENT

CITY PLAN	MANDATED	SOURCE OF MANDATE	ADOPTED	REVISION
ADA Transition Plan	Yes	Federal Requirement	January 1993	Due Now - In Progress
Transportation Development Plan (5-Year A&MRTS)	Yes	State & Federal Requirement	July 2006	July 2011
5-Year Capital Improvement Plan	Yes	State & Good Practice	2010	Annually
Pedestrian and Bicycle Management Plan	No but required to be competitive for State Active Transportation Program funding		2010	Humboldt County Association of Government's Regional Bicycle Plan 2018

## COMMUNITY DEVELOPMENT DEPARTMENT

CITY PLAN	MANDATED	SOURCE OF MANDATE	ADOPTED	REVISION
General Plan: 2020	Yes	State	2000	Currently under review for 20-year planning horizon revision
Housing Element	Yes	State	July 2014 – Adopted August 2014 - Certified	2027
Economic Development Strategic Plan	No	City General Plan	2010	
Homeless Services Plan	No	City General Plan	2007	
West End Specific Plan	No		2018	

**ENVIRONMENTAL SERVICES**

<b>CITY PLAN</b>	<b>MANDATED</b>	<b>SOURCE OF MANDATE</b>	<b>ADOPTED</b>	<b>REVISION</b>
<b>A.D.A. Transition Plan (Open Space Section)</b>	Yes	Federal	1993	
<b>California Accidental Release Prevention Program: Risk Management Plan City of Arcata Water and Wastewater Facilities</b>	Yes	Federal and State	2001	2016
<b>Community Greenhouse Gas Reduction Plan</b>	No		2006	
<b>Creeks Management Plan</b>	No		1992	
<b>Drainage Master Plan</b>	No		1997	
<b>Forest Management Plan (Arcata Community Forest/Jacoby Creek Forest)</b>	No		1994	Revision anticipated for end of 2021/beginning of 2022
<b>Household Hazardous Waste Plan</b>	Yes	State	1992	
<b>Non-Industrial Timber Management Plan</b>	Yes	State	1999	Revision anticipated for end of 2021/beginning of 2022
<b>Northern Spotted Owl Management Plan</b>	Yes	Federal	Pending	
<b>Open Space Protection Program and Acquisition Matrix</b>	No		1993	
<b>Parks and Recreation Master Plan and Demographic Update</b>	Yes	State	1979	1994 & 2010
<b>Pesticide Reduction Plan (2004)</b>	No		2004	
<b>Sanitary Sewer Management Plan</b>	Yes	State	2012	2018
<b>Source Reduction and Recycling Element (1992)</b>	Yes	State	1992	
<b>Stormwater Pollution Reduction Plan</b>	Yes	State	2005	State Mandate for MS4's replaced the City plan in 2012
<b>Trust Lands Use Plan</b>	Yes	State	1993	2012
<b>Urban Water Management Plan</b>	Yes	State	2005	2016, 2021
<b>Zero Waste Action Plan</b>	No		2017	
<b>Arcata Gateway Area Plan</b>	No		Pending	Under development



## **APPENDIX**

### **B— Ralph M. Brown Act**

**(Gov Code Sections 54950—54963)**



## THE RALPH M. BROWN ACT

*“California’s sunshine law”*

California Government Code sections 54950-54963

### GOVERNMENT CODE - GOV

#### TITLE 5. LOCAL AGENCIES [50001 - 57607]

*( Title 5 added by Stats. 1949, Ch. 81. )*

#### DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821]

*( Division 2 added by Stats. 1949, Ch. 81. )*

#### PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7]

*( Part 1 added by Stats. 1949, Ch. 81. )*

#### CHAPTER 9. Meetings [54950 - 54963]

*( Chapter 9 added by Stats. 1953, Ch. 1588. )*

#### 54950.

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.

*(Added by Stats. 1953, Ch. 1588.)*

#### 54950.5.

This chapter shall be known as the Ralph M. Brown Act.

*(Added by Stats. 1961, Ch. 115.)*

#### 54951.

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

*(Amended by Stats. 1959, Ch. 1417.)*

#### 54952.

As used in this chapter, “legislative body” means:

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

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

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

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

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

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

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

*(Amended by Stats. 2002, Ch. 1073, Sec. 2. Effective January 1, 2003.)*

#### **54952.1.**

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

*(Amended by Stats. 1994, Ch. 32, Sec. 2. Effective March 30, 1994. Operative April 1, 1994, by Sec. 23 of Ch. 32.)*

#### **54952.2.**

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including

teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

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

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

(3) (A) Paragraph (1) shall not be construed as preventing a member of the legislative body from engaging in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

(B) For purposes of this paragraph, all of the following definitions shall apply:

(i) "Discuss among themselves" means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.

(ii) "Internet-based social media platform" means an online service that is open and accessible to the public.

(iii) "Open and accessible to the public" means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules.

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

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

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a

specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

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

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

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

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

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

*(Amended by Stats. 2020, Ch. 89, Sec. 1. (AB 992) Effective January 1, 2021. Repealed as of January 1, 2026, by its own provisions. See later operative version added by Sec. 2 of Stats. 2020, Ch. 89.)*

## 54952.2.

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

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

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

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

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

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

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

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

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

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

(d) This section shall become operative on January 1, 2026.

*(Repealed (in Sec. 1) and added by Stats. 2020, Ch. 89, Sec. 2. (AB 992) Effective January 1, 2021. Section operative January 1, 2026, by its own provisions.)*

### **54952.3.**

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to

collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

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

*(Added by Stats. 2011, Ch. 91, Sec. 1. (AB 23) Effective January 1, 2012.)*

#### 54952.6.

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

*(Added by Stats. 1961, Ch. 1671.)*

#### 54952.7.

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

*(Amended by Stats. 1993, Ch. 1138, Sec. 7. Effective January 1, 1994. Operative April 1, 1994, by Sec. 12 of Ch. 1138.)*

#### 54953.

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

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

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

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in

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

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

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

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

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

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

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

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare

and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be



construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

*(Amended by Stats. 2021, Ch. 165, Sec. 3. (AB 361) Effective September 16, 2021. Repealed as of January 1, 2024, by its own provisions. See later operative version added by Sec. 4 of Stats. 2021, Ch. 165.)*

### 54953.

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

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

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

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

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

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

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

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

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

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

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

(e) This section shall become operative January 1, 2024.

*(Repealed (in Sec. 3) and added by Stats. 2021, Ch. 165, Sec. 4. (AB 361) Effective September 16, 2021. Operative January 1, 2024, by its own provisions.)*

#### **54953.1.**

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

*(Added by Stats. 1979, Ch. 950.)*

#### **54953.2.**

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

*(Added by Stats. 2002, Ch. 300, Sec. 5. Effective January 1, 2003.)*

#### **54953.3.**

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

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

*(Amended by Stats. 1981, Ch. 968, Sec. 28.)*

**54953.5.**

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

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

*(Amended by Stats. 2009, Ch. 88, Sec. 57. (AB 176) Effective January 1, 2010.)*

**54953.6.**

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

*(Amended by Stats. 1994, Ch. 32, Sec. 6. Effective March 30, 1994. Operative April 1, 1994, by Sec. 23 of Ch. 32.)*

**54953.7.**

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

*(Added by Stats. 1981, Ch. 968, Sec. 29.)*

**54954.**

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

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

- (1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.
- (2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.
- (3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.
- (4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.
- (5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- (6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- (7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

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

- (1) Attend a conference on nonadversarial collective bargaining techniques.
- (2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.
- (3) Interview a potential employee from another district.

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

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

*(Amended by Stats. 2004, Ch. 257, Sec. 1. Effective January 1, 2005.)*

54954.1.

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

*(Amended by Stats. 2002, Ch. 300, Sec. 6. Effective January 1, 2003.)*

54954.2.

(a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

- (i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.
- (ii) Platform independent and machine readable.
- (iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

- (i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.
- (ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.
- (iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

- (i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.
- (ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a

brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

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

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

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

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

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

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

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

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

*(Amended by Stats. 2016, Ch. 265, Sec. 1. (AB 2257) Effective January 1, 2017.)*

### **54954.3.**

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



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

(b) (1) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

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

*(Amended by Stats. 2016, Ch. 507, Sec. 1. (AB 1787) Effective January 1, 2017.)*

#### 54954.4.

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

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

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

*(Added by Stats. 1991, Ch. 238, Sec. 1.)*

54954.5.

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

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

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

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

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

or

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

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

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

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

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

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

LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

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

CONFERENCE WITH LABOR NEGOTIATORS

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

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

or

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

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

CASE REVIEW/PLANNING

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

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

REPORT INVOLVING TRADE SECRET

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

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

HEARINGS

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

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

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

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

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

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

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

Name of local agency representative on joint powers agency board: (Specify name) (Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

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

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

*(Amended by Stats. 2012, Ch. 759, Sec. 6.1. (AB 2690) Effective January 1, 2013.)*

#### 54954.6.

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

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

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

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

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

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

(E) Standby or immediate availability charges.

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

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or

hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision.

Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

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

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

(B) The activity to be taxed.

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

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

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

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

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited.

The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, as the case may be.

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

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

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

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

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

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

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

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

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

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

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

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

(1) The property owners subject to the assessment.

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

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

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

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

*(Amended by Stats. 2011, Ch. 382, Sec. 3.5. (SB 194) Effective January 1, 2012.)*

#### **54955.**

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

*(Amended by Stats. 1959, Ch. 647.)*

#### **54955.1.**

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

*(Added by Stats. 1965, Ch. 469.)*

#### **54956.**

(a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting

as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

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

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

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

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

*(Amended by Stats. 2011, Ch. 692, Sec. 9. (AB 1344) Effective January 1, 2012.)*

#### **54956.5.**

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

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

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

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

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or



near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

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

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

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

*(Amended by Stats. 2002, Ch. 175, Sec. 2. Effective January 1, 2003.)*

#### **54956.6.**

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

*(Added by Stats. 1980, Ch. 1284.)*

#### **54956.7.**

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

*(Added by Stats. 1982, Ch. 298, Sec. 1.)*

**54956.75.**

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

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

*(Added by Stats. 2004, Ch. 576, Sec. 4. Effective January 1, 2005.)*

**54956.8.**

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

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

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

For purposes of this section, "lease" includes renewal or renegotiation of a lease. Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

*(Amended by Stats. 1998, Ch. 260, Sec. 3. Effective January 1, 1999.)*

**54956.81.**

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

*(Added by Stats. 2004, Ch. 533, Sec. 20. Effective January 1, 2005.)*

**54956.86.**

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

*(Added by Stats. 1996, Ch. 182, Sec. 2. Effective January 1, 1997.)*

#### 54956.87.

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

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

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

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

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1

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

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

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

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

*(Amended by Stats. 2015, Ch. 190, Sec. 65. (AB 1517) Effective January 1, 2016.)*

#### 54956.9.

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

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

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

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

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

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

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

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

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

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

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the

agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

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

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

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

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

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

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

*(Amended by Stats. 2012, Ch. 759, Sec. 7. (AB 2690) Effective January 1, 2013.)*

#### 54956.95.

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

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

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

*(Added by Stats. 1989, Ch. 882, Sec. 3.)*

#### **54956.96.**

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

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

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

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

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

(b) (1) In addition to the authority described in subdivision (a), the Clean Power Alliance of Southern California, or its successor entity, may adopt a policy or a bylaw or include in its joint powers agreement a provision that authorizes both of the following:

(A) A designated alternate member of the legislative body of the Clean Power Alliance of Southern California, or its successor entity, who is not a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the Clean Power Alliance of Southern California, or its successor entity, in lieu of a local agency member's regularly appointed member, to attend closed sessions of the Clean Power Alliance of Southern California, or its successor entity.

(B) All information that is received by a designated alternate member of the legislative body of the Clean Power Alliance of Southern California, or its successor entity, who is not a member of the legislative body of a local agency member, and that is presented to the Clean Power Alliance of Southern California, or its successor



entity, in closed session, shall be confidential. However, the designated alternate member may disclose information obtained in a closed session that has direct financial or liability implications for the local agency member for which the designated alternate member attended the closed session, to the following individuals:

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

(ii) Members of the legislative body of the local agency present in a closed session of that local agency member.

(2) If the Clean Power Alliance of Southern California, or its successor entity, adopts a policy or bylaw or includes in its joint powers agreement a provision authorized pursuant to paragraph (1), the Clean Power Alliance of Southern California, or its successor entity, shall establish policies to prevent conflicts of interest and to address breaches of confidentiality that apply to a designated alternate member who is not a member of the legislative body of a local agency member who attends a closed session of the Clean Power Alliance of Southern California, or its successor entity.

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

(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

*(Amended by Stats. 2019, Ch. 248, Sec. 1. (SB 355) Effective January 1, 2020. Repealed as of January 1, 2025, by its own provisions. See later operative version added by Sec. 2 of Stats. 2019, Ch. 248.)*

#### 54956.96.

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

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

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

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

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

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

(c) This section shall become operative on January 1, 2025.

*(Repealed (in Sec. 1) and added by Stats. 2019, Ch. 248, Sec. 2. (SB 355) Effective January 1, 2020. Section operative January 1, 2025, by its own provisions.)*

#### 54956.97.

Notwithstanding any provision of law, the governing board, or a committee of the governing board, of a public bank, as defined in Section 57600 of the Government Code, may meet in closed session to consider and take action on matters pertaining to all of the following:

(a) A loan or investment decision.

(b) A decision of the internal audit committee, the compliance committee, or the governance committee.

(c) A meeting with a state or federal regulator.

*(Added by Stats. 2019, Ch. 442, Sec. 14. (AB 857) Effective January 1, 2020.)*

#### 54956.98.

(a) For purposes of this section, the following definitions shall apply:

(1) "Shareholder, member, or owner local agency" or "shareholder, member, or owner" means a local agency that is a shareholder of a public bank.

(2) "Public bank" has the same meaning as defined in Section 57600.

(b) The governing board of a public bank may adopt a policy or a bylaw or include in its governing documents provisions that authorize any of the following:

(1) All information received by a shareholder, member, or owner of the public bank in a closed session related to the information presented to the governing board of a public bank in closed session shall be confidential. However, a member of the governing board of a shareholder, member, or owner local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

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

(B) Other members of the governing board of the local agency present in a closed session of that shareholder, member, or owner local agency.



(2) A designated alternate member of the governing board of the public bank who is also a member of the governing board of a shareholder, member, or owner local agency and who is attending a properly noticed meeting of the public bank governing board in lieu of a shareholder, member, or owner local agency's regularly appointed member may attend a closed session of the public bank governing board.

(c) If the governing board of a public bank adopts a policy or a bylaw or includes provisions in its governing documents pursuant to subdivision (b), then the governing board of the shareholder, member, or owner local agency, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the public bank governing board pursuant to paragraph (1) of subdivision (b).

*(Added by Stats. 2019, Ch. 442, Sec. 15. (AB 857) Effective January 1, 2020.)*

**54957.**

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

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

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

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

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

action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

*(Amended by Stats. 2013, Ch. 11, Sec. 1. (AB 246) Effective January 1, 2014.)*

**54957.1.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(Amended by Stats. 2006, Ch. 538, Sec. 311. Effective January 1, 2007.)*

## 54957.2.

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

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

*(Amended by Stats. 1981, Ch. 968, Sec. 31.)*

#### **54957.5.**

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

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

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

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

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

Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This chapter shall not be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that a surcharge shall not be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

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

*(Amended by Stats. 2013, Ch. 326, Sec. 1. (AB 382) Effective January 1, 2014.)*

#### 54957.6.

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

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives. Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

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

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

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

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

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

*(Amended by Stats. 1998, Ch. 260, Sec. 5. Effective January 1, 1999.)*

54957.7.

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

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

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

*(Amended by Stats. 1993, Ch. 1137, Sec. 15. Effective January 1, 1994. Operative April 1, 1994, by Sec. 23 of Ch. 1137.)*

54957.8.

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

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

*(Amended by Stats. 2006, Ch. 427, Sec. 1. Effective September 22, 2006.)*

54957.9.

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



prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

*(Amended by Stats. 1981, Ch. 968, Sec. 34.)*

**54957.10.**

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

*(Added by Stats. 2001, Ch. 45, Sec. 1. Effective January 1, 2002.)*

**54958.**

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

*(Added by Stats. 1953, Ch. 1588.)*

**54959.**

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

*(Amended by Stats. 1994, Ch. 32, Sec. 18. Effective March 30, 1994. Operative April 1, 1994, by Sec. 23 of Ch. 32.)*

**54960.**

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

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

period and under the terms of security and confidentiality the court deems appropriate.

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

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

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

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

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

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

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

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

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

*(Amended by Stats. 2012, Ch. 732, Sec. 1. (SB 1003) Effective January 1, 2013.)*

#### **54960.1.**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

*(Amended by Stats. 2002, Ch. 454, Sec. 23. Effective January 1, 2003.)*

54960.2.

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

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

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

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

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

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

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

To \_\_\_\_\_:

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

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

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

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

Very truly yours,

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[Chairperson or acting chairperson of the legislative body]

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

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

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

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

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open

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

*(Added by Stats. 2012, Ch. 732, Sec. 2. (SB 1003) Effective January 1, 2013.)*

#### **54960.5.**

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

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

*(Amended by Stats. 2012, Ch. 732, Sec. 3. (SB 1003) Effective January 1, 2013.)*

#### **54961.**

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

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

*(Amended by Stats. 2007, Ch. 568, Sec. 35. Effective January 1, 2008.)*

#### **54962.**

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

*(Amended by Stats. 2006, Ch. 157, Sec. 2. Effective January 1, 2007.)*

**54963.**

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

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

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

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

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

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.

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

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

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

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

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

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

*(Added by Stats. 2002, Ch. 1119, Sec. 1. Effective January 1, 2003.)*



## **APPENDIX**

### **C—City of Arcata Travel Policy**

# **City of Arcata**

## **Administrative Policies and Procedures**

<b>Subject:</b>	<b>Travel</b>
<b>Effective Date:</b>	<b>July 1, 2007</b>
<b>Originating Department:</b>	<b>Finance</b>

### **I. PURPOSE**

The purpose of this policy is to define the City's expectations of its City officials, employees and volunteers who are required to travel in connection with their work responsibilities; to establish responsibilities and guidelines governing travel by City officials, employees and volunteers; to provide adequate controls over travel expenditures and maintain accountability while allowing for flexibility; and to provide an efficient process for approval of travel expenditures.

### **II. DEFINITIONS**

For the purposes of this policy, the following definitions will be used:

- 2.1 "Travel" - any trip taken by a City official, employee or volunteer in the course of performing their duties, including trips to conferences, seminars, meetings and workshops.
- 2.2 "Employee" - any person representing the City in an official capacity, including employees, council members or volunteers.
- 2.3 "Local Travel" - travel within a radius of fifty miles from the employee's regular work site, one way, for a one-day session or multiple day sessions.
- 2.4 "Out of Town Travel" - any travel, including out of state, that requires subsistence or actual living expenses.
- 2.5 "Mileage Allowance" - Advance paid to the employee for the use of his/her personal vehicle during travel or official City business. The reimbursement rate will be the current rate established by the General Services Administration (GSA). The mileage rates are available on the GSA website: <http://www.gsa.gov/mileage> - Select Privately Owned Vehicle Mileage.
- 2.6 "Personal Automobile" - any 4-wheeled vehicle that is manufactured primarily for use on public streets, roads, and highways pursuant to Section 280F(d)(5)(A) of the IRS Code that is not owned by the City of Arcata.

### **III. GENERAL**

It is the policy of the City of Arcata to:

- 3.1 Assure that City employees and officials adhere to procedures when arranging for travel, lodging, meals and other expenses; and that employees and officials are paid for reasonable expenses incurred for travel, conferences, meetings and meals, as a result of conducting authorized City business.
- 3.2 Allow employees to travel to conferences, seminars, meetings and workshops when it is anticipated that the City will derive a benefit from training and information received in such events or when training is mandated by law.

- 3.3 Ensure that the City travel expenditures comply with budgetary guidelines.
- 3.4 Provide a thorough audit trail for expenditures.
- 3.5 This policy does not claim to have addressed all contingencies and conditions. Expenses not specifically addressed in this policy will be paid by the City provided that the Department Head and City Manager determine that the expenses are reasonable and necessary. Such approved expenses shall be paid at the rate and manner in which the City determines most appropriate.

#### **IV. AUTHORIZATION**

- 4.1 All City employees and officials must obtain approval from an authorized person **in advance** of travel on City business for which an employee wishes to be reimbursed. The City's Travel Authorization Form (Attachment I) must be used to obtain and document approval of each trip **prior** to travel; and to approve and document expenses and reimbursements associated with travel after each trip.
- 4.2 Approval of request to use a privately owned vehicle as a means of travel must be obtained from the Department Head and City Manager at the time the City's Travel Authorization Form is submitted for approval.
- 4.3 An individual may not approve his or her own travel or approve his or her own travel documentation.

#### **V. TRAVEL ARRANGEMENTS**

- 5.1 Travel arrangements shall be made as far in advance as possible to obtain the best possible fares and rates. If travel arrangements must be cancelled for any reason, the person who made the arrangements shall cancel them in sufficient time to prevent the City from incurring unnecessary costs.
- 5.2 Travel advances shall be obtained before each trip. Typical advances would include amounts for meal expenses, applicable transportation costs, and other incidental miscellaneous expenses. If travel arrangements are canceled, any travel advance received shall be returned to the City.
  - 5.2.1 No advances will be made for airfare costs, lodging or City rented vehicle expenses. Airfare costs should be paid in advance by the City, lodging costs and City rented vehicle expenses will typically be paid using a City issued credit card.
  - 5.2.2 If a credit card has not been issued to the employee or the purchasing limits are not adequate to cover lodging costs, credit cards may be checked out of the Finance Department for use on authorized travel. Receipts from credit card purchases must be submitted to Finance, with completed Travel Authorization Form.

#### **VI. TRANSPORTATION**

- 6.1 Travelers shall use whatever mode of transportation is the most logical and least expensive. Consideration should be given to distance, time and total cost to the City. Transportation costs include, but are not limited to airplane, train, bus and taxi fares, bridge tolls, parking and car rental. Employees should generally take



the most direct and commonly traveled routes. Other routes may be authorized when official business requires their use.

6.1.1 Council member travel – It is recognized that the nature and frequency in which all five members of the City Council are obligated to travel for City business at any given time may have an impact on ensuring availability of the City's limited pool cars for other employees to conduct business. In those instances, in which the City Manager determines it is not practicable to provide a pool car for Council travel, the Council member may be required to use his/her personal vehicle for travel or the City will rent a vehicle. As further described below, for a City rented vehicle, non-employees may travel with the Council member, but are not authorized to be a driver. If a Council member is required to use his/her personal vehicle, reimbursement shall be at the higher GSA reimbursement rate for "no government furnished automobile is available". The Council member may use that mileage reimbursement to personally rent a vehicle or obtain other forms of personal transportation of his/her choosing. For personal transportation, non-employees may travel with the Council member and are allowed to be a driver.

6.2 City of Arcata vehicles should be used for travel, if available and more economical than other modes of transportation. For local travel, a gas card is provided in the car to use for refueling. However, if refueling is necessary for long distance travel, gas credit cards may be checked out of the Finance Department or other City-issued credit cards may be used for any gasoline purchases. The purchase should be recorded on the pool car log sheets and receipts must be submitted to Finance.

6.2.1 Spouses, family members and guests not associated with the City business being conducted are not allowed to travel in a City of Arcata vehicle. In this instance, a personal vehicle or other non-City transportation must be used, upon prior authorization. If a non-City passenger, is traveling for the same business purpose, they must provide a completed City Application for Ride-Along on City Business (Hold Harmless waiver) form (Attachment II) prior to travel. Approved ride-alongs shall not be drivers of the City vehicle at any time.

6.3 Airline transportation to and from a conference, seminar and/or meeting will be paid directly by the City. Ample research must be done to ensure that the best price is found either online, directly through the airline, or through a travel agency.

6.3.1 When a commercial air carrier is used, a traveler will be reimbursed for mileage to and from the airport when using a personal automobile and the actual cost of airport parking. If two or more travelers share transportation to and from the airport in a personal automobile, only one traveler is eligible for mileage reimbursement. If a van/shuttle or other form of paid transportation is used, the traveler shall be reimbursed for the actual cost.

6.3.2 Under no circumstances shall an employee pilot or be a passenger in privately owned and/or operated aircraft as a means of transportation for City travel.

6.3.3 Frequent flyer miles earned by an employee during City business travel may be retained by the employee for business or personal use. Accumulating frequent flyer miles shall not influence the selection of a flight that is not the lowest priced flight available.

6.4 Personal automobiles (including any vehicle rented at employee expense) may be used in lieu of City provided car or air travel when approved **in advance** by the Department Head and City Manager. Advance will be at the mileage allowance established by the GSA Website. Advance for private car mileage shall not exceed the cost of "coach class" airfare, plus savings in transportation costs to and from the airport, airport parking, and transportation costs to the destination. Exception to the maximum reimbursement, as stated above, may be authorized when air service is not available or reasonably convenient to the point of destination.

6.4.1 If an employee is **required** to use a personally owned vehicle (or any vehicle rented at employee expense), mileage reimbursement shall be at the higher reimbursement rate for "no government furnished automobile is available".

6.4.2 If an employee **requests** and is authorized to take a personally owned vehicle (or any vehicle rented at employee expense), mileage reimbursement shall be at the lower reimbursement rate for "if government furnished automobile is available".

6.4.3 Mileage is to be determined using Google Maps with City Hall, 736 F Street, Arcata, CA as the starting point of the trip. A screenshot of Google Maps showing the estimated mileage is to be included with travel authorization form submitted to Finance for advance.

6.4.4 A personally owned vehicle (or any vehicle rented at employee expense) shall be covered by liability insurance in the amount of \$100,000 to \$300,000 bodily injury and \$100,000 property, or the combined single limits of \$300,000.

6.5 City rented vehicles - Vehicles rented to travel to business destination at City expense may only be obtained when other modes of transportation are not available, too costly, or impractical. A City rental requires the prior approval of the Department Head and City Manager. Only intermediate size vehicles, or vehicles with an equivalent rental rate, will be authorized. If two or more persons are attending the same meeting or conference, and a vehicle is needed for City business, only one vehicle may be rented at City expense. As a precaution against paying for preexisting damage, carefully examine the condition of the rental vehicle before leaving the lot, and immediately report any damages to the car rental office.

6.5.1 The City will pay for Collision Damage Waiver (CDW) coverage. Each employee/official must purchase this at the time of rental.

6.5.2 If a non-employee (spouse, family member or guest, etc.) has been authorized by the City Manager to travel with the employee/official, they

must have a signed City Application for Ride-Along on City Business (hold harmless waiver) form on file prior to travel. **Approved ride-alongs shall not be drivers of the City rented vehicle at any time.**

- 6.6 Public Transit and Carpooling – City employees are encouraged to make optimum use of available public transit services and carpooling.

## **VII. LODGING**

- 7.1 The cost of lodging accommodations for approved conferences, seminars or meetings will be paid by the City or reimbursed to the employee as outlined in the following sections.
- 7.2 Hotel and motel charges shall be based on single occupancy rates. The accommodations used should be economical, but practical. For example, it is preferable to stay at the hotel recommended by the conference, even if that hotel may be slightly more expensive than others in the area. In instances where conference hotels are filled, the employee should attempt to secure comparable rates at the nearest hotel.
- 7.3 It is the employee's responsibility to ensure cancellation of any reservations he/she will not use. If the City is charged for an unused reservation, the employee is responsible for paying the charge, unless circumstances requiring cancellation were reasonably beyond the employee's control.
- 7.4 The City will not reimburse employees for lodging expenses incurred by family members when an employee's family accompanies him/her, or for any additional guests in the same room.
- 7.5 The City will pay lodging expenses for City employees during business travel requiring one or more overnight stays. The City will pay for lodging for the evening preceding or subsequent to a meeting or business event when the employee would have to travel at unreasonably early or late hours to reach his/her destination.
- 7.6 Hotel member points earned by an employee during City business travel may be retained by the employee for business or personal use. Accumulating member points shall not influence the selection of lodging that is not the economical or practical.

## **VIII. MEALS**

- 8.1 The City will pay for an employee's meals during business travel, including incidentals (i.e. tax and tips) at the per diem meal rates established by the General Services Administration (GSA) [<https://www.gsa.gov/>] for the travel destination (Attachment III). Employees will have the flexibility on how much to spend for each meal. Employees are not eligible for reimbursement of meal expenses that exceed the GSA per diem amount. Similarly, employees are not required to return any unused GSA per diem should meal expenses be less. Receipts are not required.

- 8.2 As explained in the GSA per diem information, meals that are included or provided (i.e. as part of the conference registration, by the hotel staying at, or other work related hosted meals) shall be deducted from the total per diem allowance. Follow the GSA per diem guidelines to determine what to deduct for provided meals and calculate the remaining per diem amount that is applicable.
- 8.3 In calculating meal allowances for partial days (i.e. travel days), the following guidelines should be used:
  - 8.3.1 Departure – If you depart
    - 8.3.1.1 after 8:00 am, deduct the breakfast allowance for the day;
    - 8.3.1.2 after 2:00 pm, deduct the breakfast and lunch allowances for the day;
    - 8.3.1.3 after 8:00 pm, deduct the entire meal allowance for the day.
  - 8.3.2 Return – If you return
    - 8.3.2.1 after 6:00 pm, you may claim the full per diem allowance for the day;
    - 8.3.2.2 between 2:00 pm and 6:00 pm, you may claim the breakfast and lunch allowances;
    - 8.3.2.3 between 8:00 am and 2:00 pm, you may claim the breakfast allowance.

## **IX. WHAT IS NOT COVERED**

- 9.1 Personal expenses will not be paid by the City. Personal items include in-room movies, spas and gyms, optional quasi-social functions or events in connection with a conference, laundry or dry-cleaning, miscellaneous sundries, or other items of a personal nature.
- 9.2 Alcoholic beverage costs are not reimbursable.
- 9.3 Personal travel shall not be mixed with business travel if it will cost the City anything in dollars or lost time or if it will harm the City's interest in any way. The City will not pay for any expenses of a spouse or other person who accompanies an employee on business travel.
- 9.4 Non-allowable expenses made with City funds or credit card shall be deducted from any reimbursement due the employee, or refunded back to the City by the employee if there is no or an inadequate amount of reimbursement due to the employee.

## **X. POLICY VIOLATIONS**

Employees who violate the travel guidelines and rules outlined in this policy are subject to disciplinary action per Chapter XI of the City's Personnel Rules and Regulations.



# TRAVEL/TRAINING AUTHORIZATION FORM

(Two copies of this form are needed for Accounts Payable)

Employee name: \_\_\_\_\_ Account number: \_\_\_\_\_

Name of event: \_\_\_\_\_

Location of event: \_\_\_\_\_ Date of event: \_\_\_\_\_

Issue Check payable to:	Purpose:	Date Needed:	Amount:
	Meal Per Diem		
	Mileage Advance*		
	Other		

\*For use of Authorized Personal Vehicle

Other Items:	
	Advance Needed
	City Car Needed
	City Credit Card Needed
	Gasoline Credit Card (Only when using a City Car)
	Personal Car to be Used (City Manager Approval Required)

Department Head Authorization: \_\_\_\_\_ Date: \_\_\_\_\_  
(For attendance of event)

Retain all receipts and attach to form

Expense Category	Estimated Cost	Actual Cost		
		Paid with Cash/Check	Paid with Credit Card	Total Cost
Transportation				
Lodging				
Meals				
Registration				
Other				
Total				
Less Advance				
Refund to Employee from City				
Due to City from Employee				

Department Head Approval of Expenses: \_\_\_\_\_ Date: \_\_\_\_\_

## Travel/Training Policies

All travel/training expenditures must be processed on the Travel/Training Authorization Form. The Administrative Assistant completes the top portion of the travel form and the Department Head Authorizes with their signature. For advances: The Administrative Assistant makes a copy of the form and submits the copy to Finance for processing. The original form is held by the Administrative Assistant until travel is complete. Finance must receive the copy by 5pm on Wednesday to guarantee a check on Friday. Copy must include back-up documentation for Advance check to be issued (ex: proof of registration, spreadsheet showing per diem breakdown, Google Map screenshot estimating mileage if applicable, etc.). Advance check will include both Per Diem total and Mileage Allowance and is issued to employee **prior** to travel date. Both Per Diem and Mileage Allowance totals are available on the GSA.gov Website. Refer to City Travel Policy for guidance on determining applicable amounts for Per Diem and Mileage Allowance.

Upon returning from travel/training, employee must, within five working days, return City issued credit cards and submit receipts for all expenses paid for with a City credit card to the Administrative Assistant. The Administrative Assistant will complete the bottom portion of the original travel form and the Department Head authorizes with their signature. The completed original Form and supporting documentation is submitted to the Finance Department. If money is due to the City from employee, a check must accompany the paperwork. If money is due to the employee from the City, completed travel form and back-up documentation must be submitted to Finance by 5pm on Wednesday to guarantee a check on Friday.

In those situations, in which an employee is authorized by the Department Head to use his/her personal vehicle, employee must complete the "Certification" on the form below and submit to the City Manager's Office for approval **prior** to travel.

If a personal vehicle is authorized, the City will reimburse employee at the rate listed on GSA.gov. Please note, a lesser mileage reimbursement rate is applied when a City vehicle is available. Refer to the City Travel Policy for further information.

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### CERTIFICATION

In accordance with City policy, approval is requested to use a privately owned automobile to attend the conference noted on the previous side. I hereby certify that whenever I drive a privately owned vehicle on City business, the vehicle shall always be:

1. Covered by liability insurance for the minimum amount prescribed by the City of Arcata in the amount of \$100,000 to \$300,000 bodily injury and \$100,000 property, or the combined single limits of \$300,000;
2. Adequate for the work to be performed;
3. Equipped with seat belts;
4. To the best of my knowledge, in safe mechanical condition.

I further certify that, while using a privately owned vehicle on official City business, all accidents will be reported within 24 hours.

Name of Insurance Company: \_\_\_\_\_ Policy Number: \_\_\_\_\_

Policy Expiration Date: \_\_\_\_\_ Driver's License Number: \_\_\_\_\_

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### RECOMMENDATION

Use of a privately owned vehicle for the Travel/Training noted on the reverse side is recommended:

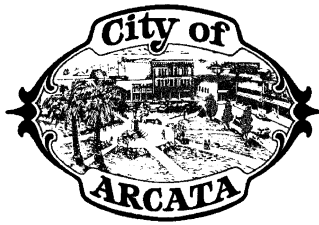
A City vehicle was available to use for travel \_\_\_\_\_ YES \_\_\_\_\_ NO

Department Head Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### APPROVAL

Employee request to use privately owned vehicle for this Travel/Training is \_\_\_\_\_ Approved \_\_\_\_\_ Denied

City Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**APPLICATION FOR RIDE-ALONG ON CITY BUSINESS**

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Phone: \_\_\_\_\_ Drivers License Number: \_\_\_\_\_  
Occupation: \_\_\_\_\_ Employer: \_\_\_\_\_  
Student: \_\_\_\_No \_\_\_\_Yes School: \_\_\_\_\_  
In case of emergency, notify: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Relationship: \_\_\_\_\_  
Date and time requested: \_\_\_\_\_  
Reason for riding: \_\_\_\_\_

**AGREEMENT ASSUMING RISK OF INJURY OR DAMAGE  
AND TO INDEMNIFY AND HOLD THE CITY OF ARCATA HARMLESS**

Whereas the undersigned being (under) (over) the age of eighteen, and not being a City of Arcata employee, has made a voluntary written request for permission to ride as an observer/passenger in a City of Arcata vehicle, and accompany \_\_\_\_\_ an employee in the \_\_\_\_\_ Department during the active performance of his/her official duties.

Now, therefore, in consideration of granting the foregoing permission to ride with or accompany City of Arcata employees, the undersigned jointly and severally agrees to and shall indemnify and save harmless the City of Arcata, its officers, employees and volunteers, from all suits or actions of every name and description brought for, or on account of injuries or damages received or sustained by the undersigned while riding with or accompanying City of Arcata employees while in the performance of their duties.

Further the undersigned agrees that while accompanying the City employee during the active performance of their duties to comply with any instructions given him/her by the employee or by any other City employee encountered during the ride-along and understands that his/her participation in the ride-along may be terminated at any time for failure to comply with instructions from the employee involved.

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Parent or Guardian's Signature:** \_\_\_\_\_  
(if under 18)

=====

**Request approved:** \_\_\_\_\_ **Date:** \_\_\_\_\_

City Manager

# CITY OF ARCATA TRAVEL POLICY ATTACHMENT III

- 1) Go to <https://www.gsa.gov> Select State and City, Select Next

MAKING TRAVEL EASIER

Per Diem	Meals & IE	Airfares	Hotels	POV Mileage
----------	------------	----------	--------	-------------

**1** Choose a Location or [Use the Old Rate Look Up](#)

Use Your Current Location

or

State  City (Optional)

or

ZIP

- 2) Select Look up Rates

GSA TRAVEL REAL ESTATE ACQUISITION TECHNOLOGY POLICY & REGULATIONS ABOUT US

Per Diem	Meals & IE	Airfares	Hotels	POV Mileage
----------	------------	----------	--------	-------------

**2** Would You Like To:



### 3) Select Current Fiscal Year, Select Look Up Rates

GSA TRAVEL REAL ESTATE ACQUISITION TECHNOLOGY POLICY & REGULATIONS ABOUT US

Per Diem Meals & IE Airfares Hotels POV Mileage

**3 Select Fiscal Year**

2018 (Current Fiscal Year) ▼

Back Look Up Rates

### 4) Find M&IE Amount. Select the Breakdown of M&IE Expenses under Footnotes #5

#### FY 2018 (Current Fiscal Year) Per Diem Rates for Fresno, California

(October 2017 - September 2018 (Current Fiscal Year))

October 2017 - September 2018 (Current Fiscal Year) The following rates apply for Fresno, California

Primary Destination (1, 2)	County (3, 4)	2017 Oct	Nov	Dec	2018 (Current Fiscal Year) Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	M&IE (5)
Fresno	Fresno	\$103	\$103	\$103	\$103	\$103	\$103	\$103	\$103	\$103	\$103	\$103	\$103	\$64

Print Results


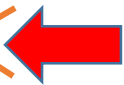
New Search

#### Footnotes

1. Traveler reimbursement is based on the location of the work activities and not the accommodations, unless lodging is not available at the work activity, then the agency may authorize the rate where lodging is obtained.
2. Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."
3. Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties (unless otherwise listed separately)."
4. When a military installation or Government-related facility (whether or not specifically named) is located partially within more than one city or county boundary, the applicable per diem rate for the entire installation or facility is the higher of the rates which apply to the cities and/or counties, even though part(s) of such activities may be located outside the defined per diem locality.
5. *Meals and Incidental Expenses*, see [Breakdown of M&IE Expenses](#) for important information on first and last days of travel.

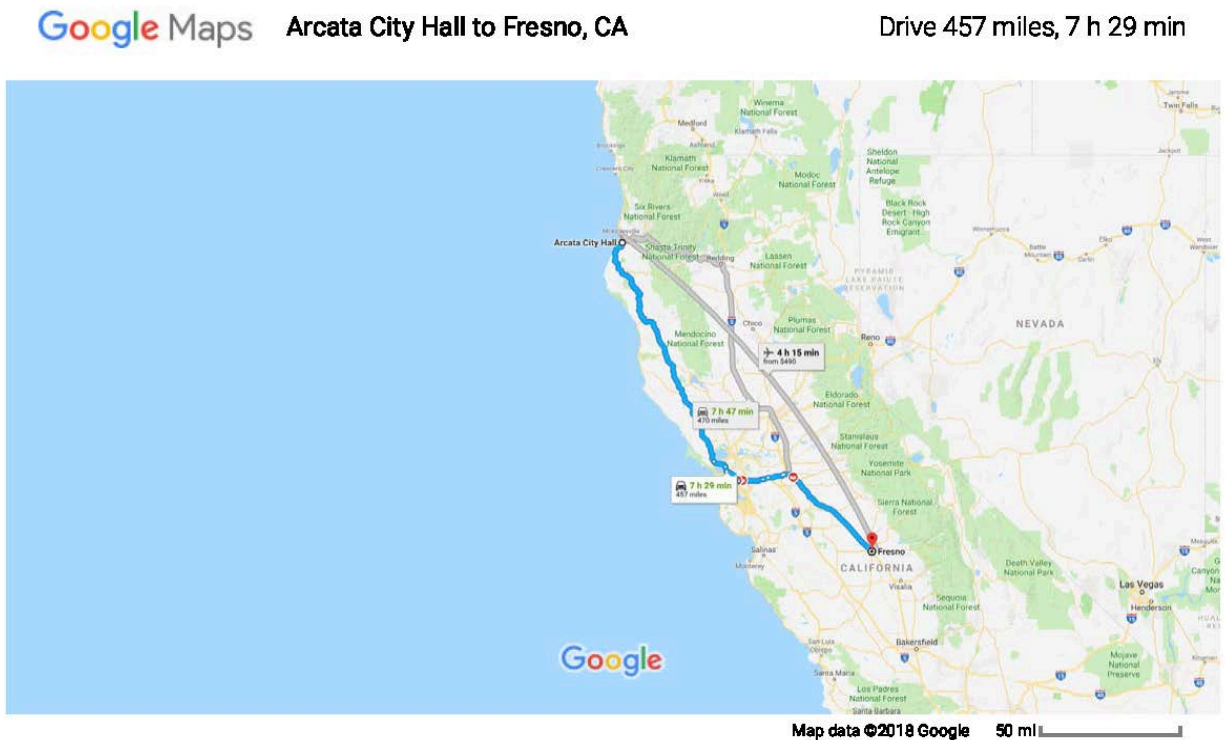
- 5) Use correct M&IE breakdown to calculate correct Per Diem amount

### M&IE Breakdown

M&IE Total (1)	Continental Breakfast/ Breakfast (2)	Lunch (2)	Dinner (2)	Incidental Expenses	First & Last Day of Travel (3)
\$51	\$11	\$12	\$23	\$5	\$38.25
\$54	\$12	\$13	\$24	\$5	\$40.50
\$59	\$13	\$15	\$26	\$5	\$44.25
 \$64	\$15	\$16	\$28	\$5	<del>\$48.00</del> 
\$69	\$16	\$17	\$31	\$5	\$51.75
\$74	\$17	\$18	\$34	\$5	\$55.50

\*\*This is your guide for filling out the travel form. Print this page from the GSA website, highlight the correct line and include it with your travel form. Deduct any meals that are included with the training. **DO NOT** use First & Last Day of Travel amount. Instead, refer to our Travel Policy Sec 8.3\*\*

6) If applicable, in the case of Authorized Personal Vehicle usage, use Google Maps to determine mileage from Arcata City Hall to Destination and back. Print a screenshot and include with travel form.



7) Create a spreadsheet based on all pertinent information and calculate the total advance owed. Include total Per Diem plus Mileage Allowance if applicable. Please refer to the example below.

## EXAMPLE OF TRAVEL TO FRESNO 8/6/18-8/10/18

Employee leaves Arcata at 1:00PM on 8/6/18

Employee returns to Arcata at 3:00PM on 8/10/18

Lunch is included with the training on 8/7, 8/8 and 8/9

Employee drives personal car even though a City car is available

	Breakfast	Lunch	Dinner	Incidental
8/6/2018		16.00	28.00	5.00
8/7/2018	15.00		28.00	5.00
8/8/2018	15.00		28.00	5.00
8/9/2018	15.00		28.00	5.00
8/10/2018	15.00	16.00		5.00
		Per Diem Total		229.00
Mileage	914	x	0.18	164.52
TOTAL ADVANCE				393.52

### Notes:

- 1) Breakfast is not included on 8/6/18 because employee leaves at 1pm.
- 2) Lunch is deducted during the training days because it is included with the training.
- 3) Dinner is deducted on 8/10/18 because employee returns at 3pm.
- 4) Mileage Allowance is the lesser amount of 0.18 because a City car was available for use.

**\*\*This is a basic excel spreadsheet which you will print and include with your travel form\*\***



## **APPENDIX**

### **D— City of Arcata Credit Card Policy**

# City of Arcata Credit Card Policy

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## Administrative Policies and Procedures

Subject:	Credit Card
Effective Date:	April 1, 1999 / Revised April 1, 2007
Originating Department:	Finance

### I. PURPOSE

The purpose of this administrative policy is to establish the City of Arcata's conditions for: (1) the issuance of credit cards to identified employees; (2) the restricted use of credit cards; and (3) the procedures for payment of charges.

This policy shall replace any and all formal policies and/or informal practices concerning credit card use previously in effect. Departmental policies that may exist to carry out overall City policy shall be revised to be consistent with the procedures contained herein. This policy is subject to modification as needed by the City Manager.

### II. DEFINITION

For the purposes of this policy, the following definitions will be used:

- 2.1 "Employee" is any person who receives a paycheck from the City of Arcata.
- 2.2 "Credit Card" refers to the VISA procurement cards issued to certain City employees through Rocky Mountain BankCard System.
- 2.3 "Single Purchase Limit" restricts the total amount of any single purchase made by the cardholder.
- 2.4 "30-Day Purchase Limit" determines the maximum dollar amount that will be authorized for a cardholder within a 30-day billing cycle.
- 2.5 "Merchant Classifications" refers to 98 merchant categories that have been defined for the procurement card program. (Attachment A)
- 2.6 "Approving Official" is the employee who is responsible for managing and monitoring the credit card activity of a group of cardholders.

### **III. GENERAL**

- 3.1 The purpose of the credit card program is to improve access to supplies and materials needed to perform jobs, and to improve the efficiency of processing payments to suppliers by reducing paperwork and staff time. It is the intent of this policy to ensure that credit cards are readily available to all full time employees for use in conjunction with their official duties as an employee of the City.
- 3.2 Credit cards will be issued to certain employees as approved by the City Manager. Generally, cards will be issued to the following employees:
  - 3.2.1 City Council members
  - 3.2.2 City Manager, Department Heads and Division Heads
  - 3.2.3 Police Captain, Lieutenant and Drug Task Force Officer
  - 3.2.4 Deputy Director of Environmental Services
  - 3.2.5 Assistant City Engineer
  - 3.2.6 Public Works Superintendents
  - 3.2.7 Water/Wastewater Superintendent
  - 3.2.8 Other employees as requested by Department Heads and approved by the City Manager and Finance Director, for the purpose fulfilling the intent described in Section 3.1 above.
- 3.3 Each card will have a single purchase limit and a monthly purchase limit. These limits will be determined by the Department Head and will be approved by the City Manager or Finance Director. In addition to these limits, cards may have a merchant classification restriction so that purchases can be limited to specific categories.
- 3.4 The use of the credit card for any purpose other than that of the City of Arcata is prohibited. In addition, capital equipment items and professional services are restricted from purchase with a credit card:
- 3.5 Each cardholder is responsible for the security of the card and for all purchases made with the card.

### **IV. PROCEDURES**

- 4.1 Each cardholder may purchase goods and services in person or by telephone.
- 4.2 A receipt/invoice is required to substantiate every purchase made using the credit card. This must contain the following information:

- 4.2.1 Description of commodities/services purchased
- 4.2.2 Quantity purchased
- 4.2.3 Price per item
- 4.2.4 Amount of sales tax and shipping charges, if applicable
- 4.2.5 Total purchase amount
- 4.3 The employee is required to review and attest to the accuracy of each monthly statement. The cardholder must also indicate on the statement the account number to which an item will be charged. The statement along with the associated receipts/invoices must be forwarded to the Approving Official within 3 days of receipt.
- 4.4 The Approving Official is required to review each cardholder's purchases to determine: (1) each purchase is a valid City purchase; (2) each purchase is supported by a receipt/invoice; and (3) the item is being charged to the correct account. The approved statements and attachments must be forwarded to the Finance Department within 5 days of receipt of the statement from the cardholder.
- 4.5 If an error in cardholder billing occurs, or if a problem with merchandise or services billed to the cardholder cannot be resolved, the cardholder should notify the Finance Department as soon as possible so that the appropriate paperwork can be completed to notify the credit card company of a disputed item.
- 4.6 Lost or stolen cards must be reported to the Approving Official within one (1) working day of discovery.
- 4.7 Each cardholder must surrender the card immediately upon retirement, termination, or upon the request of the Approving Official. Use of the card after privileges are withdrawn is prohibited.

**V. POLICY VIOLATIONS**

Employees who violate the work rules outlined in this policy are subject to disciplinary action per Chapter XI of the City's Personnel Rules and Regulations.





## **APPENDIX**

### **E— Council Approved Proclamations List**

# Council-Approved Proclamation List

<i>Month/Meeting/Date</i>	<i>Proclamation</i>	<i>On Approved List</i>	<i>Last Presented:</i>
01-2-01	AHS Career and College Center Week	12/5/2007	1/16/2020
01-2-01	National Mentoring Month	1/15/2014	1/20/2021
02-1-06	Scouting Anniversary Week	1/17/2007	2/5/2020
02-1-07	V-Month in Arcata	2/15/2006	2/5/2020
02-2-22	Spay Day USA	2/6/2002	2/19/2020
02-2-3/8	International Women's Day	3/5/2014	3/3/2021
03-1-01	Brain Injury Awareness Month	10/18/2006	3/4/2020
03-1-07	Girl Scout Week	3/6/1995	3/3/2021
03-1-07	Sunshine Week	3/7/2007	3/3/2021
03-1-1	March for Meals Month	3/16/2016	3/3/2021
03-1-11	World Rotaract Week	3/7/2012	3/4/2020
03-2-30	Welcome Home Vietnam Veterans Day	3/17/2010	3/21/2018
04-1-04	Sexual Assault Awareness and Child Abuse Prev	4/7/2004	4/3/2019
04-1-10	Week of the Young Child	4/5/2000	4/7/2021
04-2-14	Godwit Days Spring Migration Bird Festival	3/17/1997	4/7/2021
04-2-30	Bike Month	5/5/2004	4/21/2021
04-2-30	National Historic Preservation Month	4/21/2010	5/5/2021
05-1	Water Week	5/5/2015	5/1/2019
05-1-04	Arcata Tourism Month	4/21/1993	5/1/2019
05-1-06	National Nurses Week	4/17/2002	5/6/2020
05-1-11	National Letter Carriers' Food Drive Day	4/15/1995	5/1/2019
05-1-12	National Hospital Week	5/7/2008	5/6/2020
05-2-17	Older Americans Month	4/6/2011	5/20/2021
05-2-25	Kinetic Grand Championship	5/1/1999	5/19/2021
05-2-6/6	Lemonade Day Humboldt	5/18/2011	7/21/2021
06-1-01	Alzheimer's Disease Awareness	11/1/2006	6/5/2019
06-1-08	World Oceans Day	5/18/2011	6/3/2020
06-1-13	Safe & Sober Graduation Day	3/17/1993	6/2/2021
06-1-15	Oyster Week	12/16/1992	6/16/2021
06-2-17	Fourth of July Jubilee	12/16/1992	6/19/2019
08-2-9.10	Suicide Prevention Week	9/2/2015	9/1/2021
09-1	Community Pride & Peace Month	9/5/2018	9/2/2020
09-1-12	CA Coastal Cleanup Day	12/16/1992	9/1/2021
09-1-24	Queer Awareness Month	9/7/2011	9/1/2021

<i>Month/Meeting/Date</i>	<i>Proclamation</i>	<i>On Approved List</i>	<i>Last Presented:</i>
09-2	International Walk to School Day	9/19/2007	10/2/2019
09-2-16	International Day of Peace	9/7/2016	9/16/2020
09-2-17	North Coast Stand Down	4/18/2007	9/18/2019
10-1	Community Planning Month	10/18/2017	10/6/2021
10-1-01	Domestic Violence Awareness Month	10/3/2001	10/6/2021
10-1-05	Fire Prevention Week	12/16/1992	10/2/2019
10-2	National Radiologic Technology Week	11/7/2012	10/17/2018
10-2-17	Great American Smokeout	12/16/1992	11/18/2020
10-2-21	International Credit Union Day	10/1/1997	10/16/2019
11-01	California Retired Teachers Week	10/16/2019	10/16/2019
11-1	Adoption Awareness Month	10/20/2004	11/4/2020
11-1	National Hunger and Homelessness Awareness	11/7/2018	11/4/2020
11-1	Zero Waste Day	10/7/2015	10/16/2019
11-1-01	Hospice Month	12/16/1991	11/4/2020
11-1-11	Veterans Day in Arcata	12/16/1992	11/20/2019
11-2-30	Season of Wonder and Light in Arcata	11/17/2010	11/18/2020
12-1-07	Human Rights Awareness Month	12/20/2000	12/2/2020



## **APPENDIX**

### **F— City of Arcata Code of Ethics**

# City of Arcata Code of Ethics

*Adopted by the City Council July 20, 2005*

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***For Members of City Council, Boards, Commissions, Committees and Task Forces***

## **Preamble:**

The citizens, businesses and organizations of the City of Arcata are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. In keeping with the City's commitment to excellence, the effective functioning of democratic government, therefore, requires that:

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

To this end, the City Council of the City of Arcata has adopted a Code of Ethics for members of the City Council and of the City's Boards, Commissions, Committees and Task Forces to assure public confidence in the integrity of local government and its effective and fair operation.

**Acts in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the City Council, Boards, Commissions and Committees.

**Comply with the Law.** Members shall adhere to their sworn oath of office to support and defend the Constitution of the United States of America and the Constitution of the State of California against all enemies foreign and domestic. These laws include but are not limited to: the United States and California Constitutions, laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities and open processes of government and City ordinances and policies.

**Conduct of Members.** Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of council, boards and commissions, the staff or public.

**Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by the City Council and boards and commissions governing the deliberation of public policy issues, meaningful involvement of the public and implementation of policy decisions of the City Council by City staff.

**Conduct of Public Meetings.** Members shall prepare themselves for public issues, listen courteously and attentively to all public discussions before the body and focus on the business at hand. They shall refrain from interrupting other speakers, making personal comments not germane to the business of the body or otherwise interfering with the orderly conduct of meetings.

**Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

**Communication.** 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.

**Conflict of Interest.** In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest or where they have an organizational responsibility or personal relationship, which may give the appearance of a conflict of interest.

**Gifts and Favors.** Members shall not take any special advantage of services or opportunities for personal gain by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits, which might compromise their independence of judgment or action or give the appearance of being compromised.

**Confidential Information.** Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City of Arcata. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

**Use of Public Resources.** Members shall not use public resources not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

**Representation of Private Interests.** In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City of Arcata, nor shall members of Boards, Commissions and Committees appear before their own bodies or before the Council on behalf of private interests of third parties on matters related to the areas of service of their bodies.

**Advocacy.** Members shall represent the official policies or positions of the City Council, board or commission to the best of their ability when designated as delegates for this purpose. When representing their individual opinions and positions, members shall explicitly state they do not represent their body or the City, nor will they allow the inference that they do.

**Independence of Boards, Commissions, Committees and Task Forces.** Because of the value of the independent advice of boards and commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of Board, Commission, Committee or Task Force proceedings.

**Positive Work Place Environment.** Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

**Implementation.** As an expression of the standards of conduct for members expected by the City, the Code of Ethics 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, ethical standards shall be included in the regular orientations for candidates for City 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 City Code of Ethics. In addition, the Code of Ethics shall be annually reviewed by the City Council, Boards, Commissions and Committees, and the City Council shall consider recommendations from boards and commissions and update it as necessary.

**Compliance and Enforcement.** The Code of Ethics expresses standards of ethical conduct expected for members of the City Council, Boards, Commissions and Committees. Members themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of government.



## **APPENDIX**

### **G— ICMA Code of Ethics**



## ICMA Code of Ethics with Guidelines

**The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in June 2017. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2017.**

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

**Tenet 1.** Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

**Tenet 2.** Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

### GUIDELINE

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

**Tenet 3.** Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

### GUIDELINES

Public Confidence. Members should conduct themselves so as to maintain public confidence in their position and profession, the integrity of their local government, and in their responsibility to uphold the public trust.

Influence. Members should conduct their professional and personal affairs in a manner that demonstrates that they cannot be improperly influenced in the performance of their official duties.

Appointment Commitment. Members who accept an appointment to a position should report to that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time. However, once a member has accepted a formal offer of employment, that commitment is considered binding unless the employer makes fundamental changes in the negotiated terms of employment.

Credentials. A member's resume for employment or application for ICMA's Voluntary Credentialing Program shall completely and accurately reflect the member's education, work experience, and personal history. Omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a position should show professional respect for persons formerly holding the position, successors holding the position, or for others who might be applying for the same

position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report possible violations to ICMA. In reporting the possible violation, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members shall not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position that has an incumbent who has not announced his or her separation or been officially informed by the appointive entity that his or her services are to be terminated. Members should not initiate contact with representatives of the appointive entity. Members contacted by representatives of the appointive entity body regarding prospective interest in the position should decline to have a conversation until the incumbent's separation from employment is publicly known.

Relationships in the Workplace. Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization.

This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

**Tenet 4.** Recognize that the chief function of local government at all times is to serve the best interests of all of the people.

#### **GUIDELINE**

Length of Service. A minimum of two years generally is considered necessary in order to render a professional service to the local government. A short tenure should be the exception rather than a recurring experience. However, under special circumstances, it may be in the best interests of the local government and the member to separate in a shorter time. Examples of such circumstances would include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or severe personal problems. It is the responsibility of an applicant for a position to ascertain conditions of employment. Inadequately determining terms of employment prior to arrival does not justify premature termination.

**Tenet 5.** Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

#### **GUIDELINE**

Conflicting Roles. Members who serve multiple roles – working as both city attorney and city manager for the same community, for example – should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

**Tenet 6.** Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

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**Tenet 7.** Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

#### **GUIDELINES**

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections relating to the Form of Government. Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

Presentation of Issues. Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

Personal Advocacy of Issues. Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

**Tenet 8.** Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

#### **GUIDELINES**

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

**Tenet 9.** Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

**Tenet 10.** Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

#### **GUIDELINE**

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

**Tenet 11.** Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

#### **GUIDELINE**

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

**Tenet 12.** Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

#### **GUIDELINES**

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term "Gift" includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member's official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member's official duties, where gifts are exchanged among friends, associates and relatives.

Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.

In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full

disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in, or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.



## **APPENDIX**

### **H— Rosenberg's Rules of Order**



# Rosenberg's Rules of Order

REVISED 2011

*Simple Rules of Parliamentary Procedure for the 21st Century*

*By Judge Dave Rosenberg*



## MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

## VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

### About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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### ABOUT THE AUTHOR

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





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## INTRODUCTION

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

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

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

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

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

### Establishing a Quorum

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

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


### The Role of the Chair

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

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

### The Basic Format for an Agenda Item Discussion

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



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

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

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

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

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

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

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

This is done in one of three ways:

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

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

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

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

## Motions in General

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

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

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


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

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

## The Three Basic Motions

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

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



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

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

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

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

## Multiple Motions Before the Body

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

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

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

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

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

## To Debate or Not to Debate


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

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

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

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

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



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

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

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

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

## Majority and Super Majority Votes

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

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

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

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

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

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

## Counting Votes

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

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


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

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

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

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





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

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

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

*How does this work in practice?*

*Here are a few examples.*

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

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

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

Now, exactly how does a member cast an “abstention” vote?

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

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

## The Motion to Reconsider

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

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

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

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

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



## Courtesy and Decorum

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

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

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

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

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

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

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

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

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

## Special Notes About Public Input

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

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

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

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



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# Simple Parliamentary Procedures Cheat Sheet

(Adapted from *Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21<sup>st</sup> Century*)

## Meeting Basics

Establish a quorum

Call meeting to order

Move through agenda

Adjourn meeting

## Motions 101

### Basic Motions

- Basic motion on agenda item
- Motion to amend
- Substitute motion

### Meeting Motions

- Motion to adjourn
- Motion to recess
- Motion to fix the time to adjourn
- Motion to table

### Super Majority Motions

- Motion to limit debate
- Motion to close nominations
- Motion to object to the consideration of a question
- Motion to suspend the rules

A motion can be made and seconded by any member.

## Agenda Item Discussions

1. **Announce Agenda Item:** Chair clearly states agenda item number and subject.
2. **Reports and Recommendations:** Relevant speaker gives report and provides recommendations.
3. **Questions and Answers:** Technical questions from members are asked and addressed.
4. **Public Comment:** Chair allows public comment and input under the terms of the Board's policy for such comment.
5. **Motions and Action Items:**
  - a. **Motions Introduced:** Chair invites motion from body, and announces name of member introducing motion.
  - b. **Seconds:** If motion is seconded, Chair announces name of seconding member.
  - c. **Motions Clarified:** Seconded motion is clarified by maker of motion, Chair, or secretary/clerk.
  - d. **Amendments and Substitutions:** Other members may propose amended or substitute motions.
  - e. **Discussion and Vote:** Members discuss motion. Chair announces that vote will occur. Members vote on the last motion on the floor (a substitute motion) first, and if that does not pass, vote on the next-to-last motion, and so on.
  - f. **Ayes and Nays:** Chair takes vote by asking for "ayes," "nays," or "abstentions." Unless super majority required, simple majority determines whether motion passes.
  - g. **Results and Actions:** Chair announces result of vote and action the body has taken. Names of dissenters should be announced as well. *Example: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days' notice for all future meetings of this governing body."*
6. **Repeat:** Begin process again with next agenda item.

Prepared by:



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## **APPENDIX**

### **I— Typical and Routine Mayoral Functions**

# Typical and Routine Mayoral Functions

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In addition to the Mayor presiding at City Council meetings and acting as the City's Ceremonial Representative, the following is a list of other typical and routine Mayoral duties and functions:

## Agenda Development and Pre-Meeting Responsibilities

**Setting the Regular Council Agenda** – On Monday or Tuesday of the week prior to a Council meeting, the Mayor, together with a rotating Council member, meets with the City Manager and his/her designee to set the agenda for the next Council meeting. The agenda packet is then produced for distribution and posting by noon on the Friday of that week.

**Setting Study Session Agendas** – Following the Council setting a date for a study session, the City Manager's Office staff prepares an agenda template for the Mayor, City Manager, and staff representative(s) to the study session. The Mayor works with the City Manager and staff representative(s) to set the agenda. The completed agenda must be returned to the City Manager's Office staff by 3:00 p.m., Wednesday the week prior to the meeting, for final preparation, posting and distribution by noon on Friday.

**Notice and Call of Special Meetings (24-hour notice)** – If there is a need for a special meeting, the Mayor must call it and work directly with the City Manager and/or City Attorney to set the agenda. Once the agenda is determined, the City Manager's staff prepares a *Notice and Call of Special Meeting* to be signed by the Mayor, posted and distributed a minimum of 24 hours in advance of the meeting.

**Special Awards, Proclamations, and Certificates of Appreciation & Recognition** – Ceremonial items, as listed in 2.3(B) of the Council Protocol Manual, are prepared by City Manager's Office staff. Prior to a presentation date, the Mayor will be contacted when the documents are ready to be signed. Attached to the document will be the name of the representative who will be present to receive the recognition. The Mayor may designate other Councilmembers to read or present these ceremonial items.

## Signing Documents and Post-Meeting Responsibilities

**Council-Authorized Letters and Documents** – The City Council votes as a body to authorize the Mayor to send a letter or sign a document on behalf of the City or City Council. Directly following the meeting, staff prepares the letters/documents for the Mayor's signature and places the originals for signature in a designated Mayor's signature folder.

**Resolutions/Ordinances** – The City Council votes to adopt various City resolutions and to enact ordinances for incorporation into the City’s Municipal Code. Following the Council meeting, the Deputy City Clerk prepares the original documents for the Mayor’s and City Clerk’s signatures. Typically, these documents are available for signing on Friday following the meeting. If more time is required, staff will contact the Mayor to set a date.

**Correspondence with Commission and Committee Members** – Commission and Committee members serve at the pleasure of the City Council and all correspondence related to interviews, appointments, resignations, or recruitments is signed by the Mayor on behalf of the City Council. Staff will contact the Mayor when correspondence is placed in the Mayor’s mailbox for signature.

## The Mayor is the Council’s Representative to...

At the time a Councilmember is elected Mayor they also assume the role of the Council’s representative to the **City of Arcata/HSU Liaison meetings**. The outgoing Mayor will assist with the transition of duties and responsibilities of the City’s representative and provide the new Mayor with agendas, materials and project status briefings. Council representation on all other outside boards, councils, commissions, or committees will follow the guidelines of Section 2.09 – *Service on Outside Boards*.



## **APPENDIX**

### **J— The Ethical Hazards of City Council Members Attending Other Board Meetings**

# The Ethical Hazards of City Council Members Attending Other Board Meetings

BY MICHAEL DEAN



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Michael Dean is a Sacramento-based principal and the ethics chair at the legal firm of Meyers Nave. Dean serves as city attorney for the City of Dixon and assistant city attorney for the cities of Colusa and Plymouth. He can be reached at [mdean@meyersnave.com](mailto:mdean@meyersnave.com). This column is provided as ethics advice and is not intended as legal advice.

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Imagine this scenario: The planning commission is considering whether to recommend a zoning change to the city council, which would allow more residential use in the downtown area and promote the mixed-use vision in its General Plan. Wouldn't any city council member want to know as much information as possible? Attending the planning commission meeting and listening to the perspectives of the city planner, engineer, architect, commission members and others might seem like a smart move. The council member may even be able to ask questions of the participants or give his or her views, thus learning about the issues and influencing the matter before it comes before the city council. In fact, city council members can often be found in the audience of planning commission meetings, listening to the proceedings and occasionally participating.

However, this may not be such a good idea. As innocent as a council member's motives may be, when he or she personally attends a planning commission meeting or another subordinate committee meeting, he or she may be crossing an ethical boundary. Council members do not violate any laws by *attending* commission meetings. However, they run the risk of:

- Potentially revealing a biased view, thereby causing their own disqualification should the matter at hand subsequently come before the council;
- Interfering with the role of the commission as an independent advisory body; and

- Not acting in accordance with the views of the city council as a whole.

Most city council members know to steer clear of the somewhat hazy legal boundaries that might cause them to be disqualified from the decision-making process due to bias. Many if not most planning commission or other commission decisions are merely advisory to or at least appealable to the city council. Because the right to due process is attached to many of these types of commission decisions, the participants in such proceedings have the right to an unbiased decision-maker at the city council level. A council member who comments at the commission meeting and indicates a firm position on a particular matter may be subjected to a challenge for bias when the same issue reaches the city council.

### **Related Ethical Challenges**

Beyond the issue of perceived bias, participating in a commission meeting raises other ethical questions. For instance, council members generally have the authority to remove a commission member. With this power, a council member's mere attendance at a meeting can be highly influential, especially when he or she makes his or her opinions known. Merely indicating that one is not speaking for the entire council, but rather providing one's own opinion, does not address the significant impact of the "boss" offering an opinion. This influence may also jeopardize a significant role of the commission, which is to provide independent recommendations or decisions to the city council. After all, none of the cities' commissions are required to exist; if the city council wants to have the role of decision-maker, it could take that role. But when a city establishes a commission, the city council has also by implication indicated its desire to have an independent body make decisions or recommendations. The presence of the appointing authority at the commission meetings affects that independence.

Likewise, in a council-manager form of government, the intent and expectation is that a city council will act as a whole, not as individuals. Council members normally receive the same information simultaneously from city staff or from their subordinate commissions or the public's testimony. This allows the council members as a body to draw conclusions in a fair and balanced way based upon the same factual foundation.

City council members may undermine this expectation when they individually attend meetings of a subordinate commission. To some extent the council member who attends collects information that will not reach other council members in quite the same way. Those council members who attend may also subtly influence either the outcome of the commission's deliberations or how the matter will eventually be presented before the council — in ways not available to the council members who did not attend the commission meeting.

Of course, council members do not completely give up their rights as private citizens, and they are both free to and expected to gather information relevant to the performance of their duties. They are entitled to attend a commission's public meeting. However, to remain firmly upright on the ethical tightrope, council members should wait until the commission makes its recommendation to the city council in its entirety — thus preserving the original intent of both the independent commission and the city council.

### **Alternatives to Attending in Person**

This does not deprive council members of the ability to learn what occurs at a commission meeting. A city council member may listen to most meetings online, on television or by using the city clerk's taped

recordings. Information can also be obtained by reading the commission's meeting minutes. A council member's personal presence at or participation in a commission meeting, on the other hand, could reveal a biased view, disrupt the independence of the commission or exert undue influence on the commission, regardless of the council member's intent. It is best avoided.

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**For More Information**

Learn more about bias in the October 2006 "Everyday Ethics" column, "When an Elected Official Feels Passionately About an Issue: Fair Process Requirements in Adjudicative Decision-Making."





## **APPENDIX**

### **K—Dealing with Disruptions at Public Meetings**



**Renne Sloan Holtzman Sakai LLP**  
**Public Law Group®**

# **Dealing With Disruptions at Public Meetings**

## **Legal and Practical Considerations**

**League of California Cities**

**2015 Mayors and Council Members Executive Forum**

**Randy Riddle**

**Renne Sloan Holtzman Sakai LLP**

### **Introduction**

The Brown Act, as well as court decisions applying broader constitutional principles, recognizes the general right of the public to attend and, to some extent participate in, city council meetings. Those meetings frequently involve controversial, divisive and highly charged issues that can result in disruptions by members of the public and, at times, by members of the legislative body itself. This paper provides an overview of the legal principles that come into play when dealing with such disruptions, and practical considerations for resolving disruptions at public meetings.

### **The Legal Framework**

A local legislative body seeking to address a disruption in its meetings must do so consistent with governing law, including the Brown Act, other state statutory provisions, and First Amendment considerations developed by federal and state courts. A city council seeking to prevent or deal with disruptions must do so with these legal considerations in mind, and in close consultation with its city attorney and city manager.

### **The Brown Act**

The primary body of law governing the conduct of meetings of city councils and other local legislative bodies in California is the Brown Act.<sup>1</sup> This discussion focuses on those provisions of the Brown Act that address participation by members in meetings of legislative bodies, and the authority of those bodies to address behavior that disrupts the ability of the body to conduct the public's business. For a more comprehensive guide to the Brown Act, refer to *Open & Public IV: A Guide to the Ralph M. Brown Act*, published by the League of California Cities.<sup>2</sup>

The Brown Act seeks to strike a balance between the right of the public to participate in meetings of their legislative bodies with the need for those bodies to conduct the public's business effectively and productively. Of course, the extent to which the Brown Act strikes the proper balance is a matter for debate.

The Brown Act generally requires the public's business to be conducted in open and public meetings, and that the public be provided prior notice of the matters that will be considered at the meeting.<sup>3</sup> The

Brown Act also recognizes the right of the public to participate in meetings by providing comment on items on the agenda, and on matters not on the agenda but within the subject matter jurisdiction of the body.<sup>4</sup> Moreover, individuals, as well as members of the news media, may record public meetings.<sup>5</sup>

The Brown Act specifically provides that a legislative body may not “prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”<sup>6</sup> Federal courts, employing a First Amendment analysis, have similarly invalidated rules aimed at shielding public employees and officials from public criticism at meetings.<sup>7</sup>

The Brown Act authorizes legislative bodies to adopt reasonable regulations on public participation. This authority includes adopting regulations on public testimony.<sup>8</sup> Such regulations must be enforced fairly and without regard to the viewpoint of the speaker. Similarly, the body may regulate the recording or broadcast of the meeting upon making a finding that the noise, illumination, or obstruction of view from the recording would constitute a persistent disruption of the proceedings.<sup>9</sup>

Significantly, the Brown Act also expressly authorizes the legislative body to remove from a meeting those persons who willfully interrupt the proceedings.<sup>10</sup> If order still cannot be restored, the legislative body may order that the room be cleared. The legislative body must allow members of the news media who have not participated in the disturbance to remain in the meeting room and observe the meeting. The legislative body may establish a process to permit individuals not responsible for the disturbance to reenter the meeting room.<sup>11</sup>

### **Other Statutory Provisions**

Independently of the Brown Act, California Penal Code section 403 makes it a misdemeanor to willfully disturb or break up a lawful assembly or meeting unless the person has legal authority to do so.

*McMahon v. Albany Unified School Dist.*<sup>12</sup> discusses the application of this statute.

The plaintiff dumped bags of garbage on the floor during a school board meeting. He was arrested for violating section 403, and sued for unlawful arrest.

The court concluded that the plaintiff's arrest was proper because he initially had been warned not to dump the trash, and the body was unable to proceed with the meeting because of plaintiff's conduct. As the court explained, unless the plaintiff was arrested, "[e]ither the meeting would have been further delayed at some point while McMahon picked up the garbage or other speakers would have had to stand near the trash in order to address the board and audience members would have been forced to peer over a mound of garbage in order to watch a public body perform its duty."<sup>13</sup> Accordingly, the court concluded, the trash dumping did not merely "disturb the sensibilities" of the board members. Rather, it actually impaired the ability of the body to effectively conduct its meeting.

Finally, California Government Code § 36813 – which is not part of the Brown Act – authorizes a city council to address disruptions by members of the council. That provision states that a city council "may punish a member or other person for disorderly behavior at a meeting." In exercising this authority, the council must act within constitutional constraints.<sup>14</sup>

### **First Amendment Principles Governing Legislative Body Meetings**

The ability of a city council to address disruptions of its meetings within the constraints of the law would be difficult enough if the governing law consisted solely of these state code provisions. Courts, however, have concluded that a city council meeting is a limited public forum for purposes of First Amendment analysis, adding additional complexity to this area.<sup>15</sup>

As the Ninth Circuit has explained, "[c]itizens have an enormous first amendment interest in directing speech about public issues to those who govern their city."<sup>16</sup> Accordingly, the provisions of the Brown Act and Penal Code section 403 authorizing the legislative body to address disruptions must be implemented consistent with First Amendment principles.

In *White v. City of Norwalk*, the Ninth Circuit Court upheld a city ordinance that authorized the city council to order removed individuals who uttered "personal, impertinent, slanderous or profane" remarks if the remarks "disrupted, disturbed, or otherwise impeded" the conduct of the meetings. The court explained that the presiding officer should not rule speech out of order "simply because he disagrees with it, or because it employs words he does not like."<sup>17</sup> The court explained, however, that under the challenged ordinance, "[s]peakers are subject to restriction only when their speech 'disrupts,

disturbs or otherwise impedes the orderly conduct of the Council meeting.’ So limited, we cannot say that the ordinance on its face is substantially and fatally overbroad.” (*Id.*) More specifically, the court explained:

A speaker may disrupt a Council meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies. The meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner. Indeed, such conduct may interfere with the rights of other speakers.

Of course the point at which speech becomes unduly repetitious or largely irrelevant is not mathematically determinable. The role of a moderator involves a great deal of discretion. Undoubtedly, abuses can occur, as when a moderator rules speech out of order simply because he disagrees with it, or because it employs words he does not like. But no such abuses are written into Norwalk’s ordinance, as the City and we interpret it. Speakers are subject to restriction only when their speech ‘disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting.’ So limited, we cannot say that the ordinance on its face is substantially and fatally overbroad.<sup>18</sup>

In *Norse v. City of Santa Cruz*,<sup>19</sup> the Ninth Circuit explained that city councils may “regulate not only the time, place, and manner of speech in a limited public forum, but also the content of speech – as long as content-based regulations are viewpoint neutral and enforced that way.” Indeed, the city council may “close an open meeting by declaring that the public has no First Amendment right whatsoever once the public comment period has closed.”<sup>20</sup>

The *Norse* court emphasized, however, that city councils may not “extinguish all First Amendment rights” at a public meeting.<sup>21</sup> For example, a member of the public may not be ordered removed from the meeting merely for making an inflammatory gesture, such as a “Nazi salute,” unless this conduct was itself *actually* disruptive.<sup>22</sup> The court in *Norse* emphasized that city councils are not free to define “disruption” in whatever manner they choose. Rather, the court emphasized that “[a]ctual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc*<sup>23</sup> disruption, or imaginary disruption.”

The Ninth Circuit recently emphasized the requirement that both the city rules of order regulating conduct at public meetings – and the actual application of those rules – be limited to conduct that is *actually* disruptive, at least to the extent that the person is to be removed from the meeting for the conduct.<sup>24</sup> Because the challenged ordinance regulating “insolent” conduct during a meeting could not be narrowly construed to apply only when the “insolent” conduct actually disrupted the meeting, the court invalidated that provision of the ordinance.<sup>25</sup>

In applying rules prohibiting disruptions of meetings, the requirement of viewpoint neutrality is critically important. Courts have invalidated orders that individuals be removed from meetings where the courts concluded that the actions were based on the viewpoints of the speakers, or speech offended the sensibilities of the public officials.<sup>26</sup>

California courts have also applied First Amendment principles to limit the circumstances in which a body may order a member of the public removed from a meeting for behavior the body deems to be disruptive. *In re Kay*<sup>27</sup> involved the scope of Penal Code section 403. The court recognized that the orderly conduct of public meetings protects the right to free speech because “[f]reedom of everyone to talk at once can destroy the right of anyone effectively to talk at all.”<sup>28</sup> The court concluded, however, that Penal Code §403 does not “grant to the police a ‘roving commission’ to enforce Robert’s Rules of Order.” (*Id.*)

Accordingly, the court concluded that section 403 must be limited to those situations where a member of the public substantially impairs the conduct of the meeting by intentionally committing acts in violation of implicit customs or usages or of explicit rules for governance of the meeting, of which he knew, or as a reasonable man should have known.”<sup>29</sup> The court expressly cautioned that, “[i]f any audience participation is permitted the rules regulating who may speak cannot be used to silence a participant merely because his views happen to be unpopular with the audience or with the government sponsors of the meeting.”<sup>30</sup>

Again, a common theme among all of these cases is that city councils, in seeking to address disruptions, must do so in a consistent, viewpoint neutral manner.

### **General Considerations for Addressing Disruptive Conduct**

With these legal principles in mind, and before discussing specific disruptive situations, we will provide some general thoughts on steps that can be taken to prevent or reduce the degree of disruption at public meetings, based on our experience.

1. **Adopt Rules of Order That Clarify the Types of Behavior Deemed Disruptive.** Having specific rules that identify the types of conduct deemed disruptive, rather than having this issue addressed through ad hoc rulings, is a critical first step. In adopting your rules – with the advice of your city attorney – look to rules that have been upheld by courts, such as those challenged in *White v. City of Norwalk*. Consistent with *Norwalk* and *Norse*, those rules should make clear that they prohibit only behavior that *actually* disrupts the meeting, and that they will be applied in a viewpoint neutral manner.
2. **If a Highly Charged Issue Is on the Agenda, Encourage the Presiding Officer to Explain These Rules to the Public, and How They Will Be Applied.** We think that this practice serves multiple purposes. First, it reminds the presiding officer and other council members of how disruptions must be handled, and that the rules must be applied in an even-handed manner. Second, it lets the audience know at the outset that the city council has adopted rules prohibiting disruptions, and what the consequences will be if someone chooses to engage in conduct that actually disrupts the meeting. Third, should someone be removed from the meeting, and later challenge the removal in court, it will assist in the defense of the action.
3. **Meet With Your City Attorney, City Manager, and If Appropriate, a Police Department Representative, Before the Meeting to Ensure That Everyone Is on the Same Page About How Disruptions Will Be Handled.** In many cities, a police officer serves as the sergeant-at-arms responsible for carrying out the directives of the presiding officer, or city council. In addition, to the extent that a member of the audience engages in conduct that violates Penal Code section 403, police officers may be involved in arresting an individual for violating that section.

We have found that it is very helpful to meet with the city attorney, city manager and police chief or designee, to ensure that everyone has the same understanding and expectations about the circumstances



and process that would lead to a member of the audience being removed, and perhaps cited for violating Penal Code section 403. For example, everyone should be on the same page about the need for the challenged conduct to be actually disruptive, that actions to address such conduct be done even-handedly without reference to the viewpoint of the member of the public, and the interaction between the presiding officer and police officer or other sergeant-at-arms.

**4. Provide at Least One Warning Before Ordering a Disruptive Individual from the Meeting Room.**

Given the rights of the public under the Brown Act and First Amendment, it is our view that except in the most extreme cases, the presiding officer should, if at all possible, clearly warn the individual that his or her conduct is actually disrupting the meeting, and request that it cease, before taking action to have the individual removed from the meeting room.

**5. Organize the Agenda in the Manner Most Likely to Ensure That The Critical Business of the Council Can Be Completed Even If Disruptions Are Anticipated With Respect to a Particular Agenda Item.**

This is a practical, rather than legal consideration, and must be assessed on a case-by-case basis. If there are important, but not controversial, matters on the same agenda as a highly charged item, it may be best to have the council address those matters early in the meeting, before tensions rise, nerves fray, and the decision-making process becomes impaired.

**6. Remain Calm and Focused, and Provide an Example Through Your Own Demeanor.** Again, this is a practical consideration, but an important one. It has been our experience that the public feeds off of rancor and discord among members of the council. There are certainly limits as to what city council can do when tempers flare, but addressing the situation in a calm and assured manner may help the situation.

**Dealing With Specific Types of Disruptive Conduct by Member of the Public**

We cannot, of course, address every type of disruption that might occur during a public meeting. We will discuss types of disruption that we have seen arise with some frequency, offer some suggestions for addressing them, and hopefully spark further suggestions at the conference discussion of this topic.

**1. A Speaker Refuses to Leave the Microphone After His or Her Speaking Time Has Expired.** In our experience, this is one of the most common types of “disruptions” that can occur during a council

meeting. The Ninth Circuit has identified this type of conduct as one that can result in an actual disruption, and one that is within the discretion of the presiding officer to address.<sup>31</sup> Nonetheless, this is the quintessential example of a situation where at least one warning should be issued before any effort is made to remove the speaker for disrupting the meeting. We have found that it can be effective to provide to the city clerk – who is likely to be viewed as more impartial than an elected presiding officer – the ability to turn off the microphone (if one is used) once the person has been warned that his or her speaking time has expired.

This is a situation where enforcing the rule in an even-handed manner is extremely important. If the audience senses that the presiding officer is not enforcing the time limits against speakers on one side of an issue, the ability to enforce the time limits can be undermined, and it can lead to unruly behavior by others in the audience.

**2. Speakers Insist on Addressing Matters Clearly Not Relevant to the Agenda Item.** This type of “disturbance” can be a difficult one to properly assess and police. It can arise in different ways.

First, a speaker may use his time to comment on something that is indisputably irrelevant to the specific agenda item. For example, in connection with an item to declare June as City Attorney Month, a speaker uses his time to talk about the need to fix potholes on Main Street.

Second, a speaker may seek to speak during general public comment about a specific item on that agenda but that the council has not yet reached, and that will have its own time set aside for public comment.

Third, a speaker may attempt to discuss a subject that is not on the agenda, nor within the subject matter jurisdiction of the city council, such as using his time to advertise for sale his used Subaru.

Again, the approach to be used depends on the extent of the problem caused by this practice. If there are thirty items on the agenda, and it becomes apparent that the individual is committed to speaking about the same clearly irrelevant subject on each of those items, then after clear warnings to the individual, ordering him or her removed may be appropriate. In more isolated cases, we believe that the more

practical solution is encourage the person to address the agenda item, and leave it at that. Apart from the fact that it is unlikely that a single isolated instance will rise to the level of an actual disruption, is likely to take more time to remedy the problem than it would be hear the person out.

### **3. Verbal Disruptions from the Audience**

A council's consideration of a particularly controversial matter can lead to heated emotions on both sides of the issue. At times these emotions can manifest themselves in the form of outbursts from the audience, either while individuals are providing public comment, or during the council's deliberation of the issue.

Addressing this species of disruption depends on how widespread, noisy and continuous the outbursts become. If individual members of the audience causing the actual disturbance can be identified – and if warnings are not effective in quieting the outbursts – those specific individuals may be removed.

If, on the other hand, the outbursts come from a significant portion of the audience, removing individuals is unlikely to be effective, and may even exacerbate the problem with the remaining audience members. Instead, following warnings, the more practical and effective practice would be to call a brief recess. In addition to giving the crowd an opportunity to cool off, it also provides an opportunity to confer with the presiding officer, city manager and police representative about next steps in the event the nature of the outbursts constitute an actual disturbance of the meeting.

And that brings us to the “nuclear” option: ordering that the room be cleared. We have never seen that option exercised, and there are compelling reasons – legal, political and practical – for choosing not to resort to an option that could result in photos in the next day's newspaper of police officers ushering folks out of a public meeting. We believe that almost any alternative is preferable – including threatening the use of the option, or continuing the matter to later in the meeting or to some future meeting.

If the option is to be exercised, strict adherence to the statutory requirement – including allowing the press back in and determining whether others should be allowed in – should be strictly followed. You may also wish to consider allowing individuals back in one at a time to provide public comments, and

broadcasting the audio of the meeting to an area where those who have been removed can listen, assuming the availability of the necessary technology.

### **When It Is A Council Member Who Is Being Difficult**

Council meetings are difficult enough for a city council to regulate when it is members of the public that engage in belligerent and disruptive behavior. The issues in dealing with disruptive behavior are compounded when it is a member of the city council itself who is behaving badly or disrupting the meeting by refusing to comply with the mayor's request for order, complying with the rules of order, or making *ad hominem* personal attacks or accusations involving other council members or staff.

In addition to the First Amendment rights that all citizens speaking at public meetings have, as discussed above, elected officials have the additional First Amendment protection arising from holding public office. In *Carter v. Commission on Qualifications of Judicial Appointments*,<sup>32</sup> the court stated that “the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship.” Restrictions on the First Amendment rights of elected and appointed officials is likely subject to more stringent review than those of non-elected citizens.<sup>33</sup>

In the case involving the refusal of the Georgia House of Representatives to seat Julian Bond because of his statements on the Vietnam draft, the US Supreme Court stated that “the manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.”<sup>34</sup> In *Miller v. Town of Hull*,<sup>35</sup> the Court of Appeals affirmed a 42 U.S.C section 1983 jury verdict, including punitive damages, against a town council that attempted to remove members of an appointed city redevelopment authority based on the authority's exercise of First Amendment rights in supporting a subsidized housing project that the town council opposed.

It follows that great caution must be exercised in determining that a council member or board member is disruptive and subject to removal from a public meeting. Absent clear behavior that is threatening to public safety or involves physical conduct that disrupts a meeting, a court is likely to find issues of fact precluding summary judgment and requiring an evidentiary showing of the constitutional basis for the exclusion.

In *Vacca v. Barletta*,<sup>36</sup> acting chair Barletta told Vacca, a member of the school board, that he would not continue with a “screaming debate” where Vacca was “aggressively challenging” the school

superintendent. Barletta called a recess, and shortly after the meeting resumed three police officers physically dragged the protesting Mr. Vacca from his seat, handcuffed him, and took him to the police station for the duration of the meeting. Good drama, but bad decision, as the summary judgment for Barletta was reversed by the US Court of Appeals based on disputed facts on whether Vacca's removal was content-neutral for disruption or for constitutionally protected speech. It should be noted that the case does not say that Barletta acted on the advice of the board's counsel, who perhaps was not present and didn't have the chance to counsel his client.

#### 1. Practical Pointers

- a. Be extremely cautious in considering the removal of a council member at a public meeting, as absent compelling evidence on a tape of the meeting it will be setting the council member up to claim he/she is being targeted for First Amendment expression, is likely to aggravate rather than calm the situation in the long term, and may result in a lawsuit against the agency and mayor claiming violation of federal constitutional rights.
- b. If a meeting becomes unruly or difficult, a recess is often a good way to provide a short respite from the arguing and accusations and to provide the opportunity for council members to cool down and hopefully return as adults to the podium.
- c. When a councilmember continues to return to points already made and wants to speak multiple times and at length on the same issues, the parliamentary procedure motion to "end debate and call the question" is an effective method to move the item along.

### **Conclusion**

The key to addressing disruptions at city council meetings is to act transparently, consistently and without regard to the viewpoint of the speaker. Adopting specific rules governing this area, and discussing their operation with the city attorney and city manager when a potentially charged issue is coming before the Council, helps to accomplish that goal.

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<sup>1</sup> Government Code section 54950 et seq.

<sup>2</sup> This excellent publication is available at <http://www.cacities.org/UploadedFiles/LeagueInternet/86/86f75625-b7df-4fc8-ab60-de577631ef1e.pdf>. The Attorney General's 2003 guide to the Brown Act, although now somewhat out of date, is another valuable source of information about this statutory scheme. [http://caag.state.ca.us/publications/2003\\_Main\\_BrownAct.pdf](http://caag.state.ca.us/publications/2003_Main_BrownAct.pdf)

<sup>3</sup> Government Code §§ 54953 and 54954

<sup>4</sup> Government Code § 54954.3. The right of members of the public to address matters not on the agenda but within the jurisdiction of the legislative body does not extend to special meetings unless the body itself grants that right through its rules of order.

<sup>5</sup> Government Code § 54953.5

<sup>6</sup> Government Code § 54954.3

<sup>7</sup> *Baca v. Moreno Valley Unified School Dist.*, 936 F. Supp. 719 (C.D. Cal. 1996); *Leventhal v. Vista Unified School Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997).

<sup>8</sup> Government Code § 54953.3

<sup>9</sup> Government Code § 54953.5 and 54953.6

<sup>10</sup> Government Code § 54957.9

<sup>11</sup> *Id.*

<sup>12</sup> 104 Cal.App.4<sup>th</sup> 1275 (2002)

<sup>13</sup> *Id.* at 1289.

<sup>14</sup> See *Nevens v. City of Chino* (1965) 233 Cal.App.2d 775, 778 (in invalidating prohibition on tape recording city council meetings, court explained that rules adopted under section 36813 cannot be "too arbitrary and capricious, too restrictive and unreasonable.")

<sup>15</sup> *White v. City of Norwalk* (9th Cir. 1990) 900 F.2d 1421, 1425.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*; see *Steinburg v. Chesterfield County Planning Comm'n* (4<sup>th</sup> Cir. 2008) 527 F.3d 377, 384-385 (rejecting First Amendment challenge to removal of individual for failing to address matters relevant to the subject of the meeting); *Rowe v. City of Cocoa* (11<sup>th</sup> Cir. 2004) 358 F.3d 800, 803 ("As a limited public forum, a city council meeting is not open for endless public commentary speech but instead is simply a limited platform to discuss the topic at hand"); *Eichenlaub v. Township of Indiana* (3<sup>rd</sup> Cir. 2004) 385 F.3d 274, 281 (body may remove a "repetitive and truculent" speaker in order to prevent 'badgering' and 'constant interruptions.');" (*Galena v. Leone* 199 (3<sup>rd</sup> Cir. 2011) 638 F.3d 186 (member of the public who continues to interrupt meeting by making "objections" may be removed from meeting); (*Jones v. Heyman* (11<sup>th</sup> Cir. 1989) 888 F.2d 1328, 1329 (presiding officer may require that speakers adhere to the agenda); *Scroggins v. City of Topeka, Kansas*, 2 F. Supp. 2d 1362 (upholding a viewpoint neutral city council rule prohibiting personal attacks); but see *Richard v. City of Pasadena* (C.D. Cal. 1995) 889 F.Supp. 384 (invalidating rule requiring members of the city council "[t]o perform responsibilities in a manner that is efficient, courteous, responsive and impartial" on the ground that it was unconstitutionally vague and did not require that the regulated conduct be disruptive); see generally *But It's My Turn to Speak! When Can Unruly Speakers at Public Hearings Be Forced to Leave or Be Quiet*, 41 Urb.Law 579 (2009).

<sup>19</sup> 629 F.3d 966, 975 (9<sup>th</sup> Cir. 2010)

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 975-976.

<sup>22</sup> *Id.* at 976; *Leonard v. Robinson* (6<sup>th</sup> Cir. 2007) 477 F.3d 347, 352 (single utterance of obscenity did not constitute disruption sufficient to justify individual's removal from meeting).

<sup>23</sup> I.e., "disruption" that is determined retroactively.

<sup>24</sup> *Acosta v. City of Costa Mesa* (9<sup>th</sup> Cir. 2012) 694 F.3d 960, 971-972.

<sup>25</sup> *Id.* The court, however, severed that provision from the ordinance to save it from complete invalidation. 694 F.3d at 977-978.

<sup>26</sup> *Norse, supra*, 629 F.3d at 976; *Monteiro v. City of Elizabeth*, 436 F.3d 397 (3<sup>rd</sup> Cir. 2006); *Musso v. Hourigan*, 836 F.2d 736, 739 (2d Cir. 1988); see *Kindt v. Santa Monica Rent Control Bd.* (9<sup>th</sup> Cir. 1995) 67 F.3d 266, 270-71 (“[L]imitations on speech at meetings must be reasonable and viewpoint neutral . . . .”)

<sup>27</sup> 1 Cal.3d 930 (1970)

<sup>28</sup> *Id.* at 941.

<sup>29</sup> (*Id.* at 943)

<sup>30</sup> (*Id.* at 943, fn.10.)

<sup>31</sup> *White v. City of Norwalk, supra*, 900 F.2d at 1425.

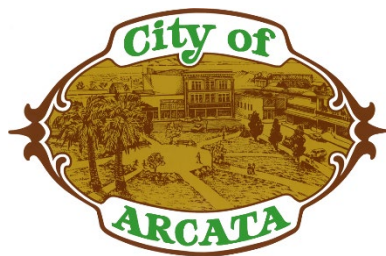
<sup>32</sup> 14 Cal. 2d 179 (1939).

<sup>33</sup> *Huntley v. Public Util. Com.* (1968) 69 Cal. 2d 67.

<sup>34</sup> *Bond v. Floyd*, (1966) 385 U.S. 116.

<sup>35</sup> 878 F. 2d 523 (1989).

<sup>36</sup> 933 F. 2d 31



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