City of Red Bluff
City Council Policy Manual

March 2023

CITY COUNCIL POLICY MANUAL

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CHAPTER 1.

PURPOSE OF MANUAL

The Red Bluff City Council Policy and Operations Manual is a compendium of City Council approved policies and practices, and historical, legal and general information to assist the City Councilmembers. City Council affairs are enhanced by the agreement to practices, roles and responsibilities between the City Council and staff and this document conveys the mutual understandings and the duties of each. Procedures and guidelines are established so that expectations and practices can be clearly articulated to guide City Councilmembers and staff in their actions. It is intended and expected that the manual will be updated as often as there are changes or additions by the City Council. Therefore, it will be a "living" document with ongoing updates and modifications.

While serving as a public official, there are myriad of issues. This policy manual attempts to centralize information on common issues related to local government. This manual is intended to be a guide and is not a substitute for the counsel, guidance, or opinion of the City Attorney.

CHAPTER 2.

CITY GOVERNMENT

Council/Manager Form of Government

The City of Red Bluff has a Council/City Manager form of government. As described in the California Government Code Sections 34851-34859, certain responsibilities are vested in the City Council and 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 what public policy is and gives direction to the City Manager to administer the affairs of the city government in a businesslike and prudent manner.

The City Council is responsible for appointing only two positions within the City organization:

City Manager

The City Manager's duty is to direct the daily operations of city government, to prepare and monitor the budget, and to implement the policies and programs initiated by a majority of the City Council. The City Manager is responsible to the City Council 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 appointments.

City Attorney

The City Attorney represents the City and the City Council in litigation against the City and provides advice and counsel on all legal matters before the Council. Since 1987, the City has retained a law firm for legal services which in turn designates an individual of the firm, with City Council approval, to serve in the position of City Attorney.

Other Elected/Appointed Officials - City Clerk, City Treasurer, Deputy City Clerk

City Clerk and City Treasure

The City Clerk and City Treasure are elected positions. The City Clerk is responsible attending City Council meetings and producing the minutes from the meetings. The City Treasure reconciles bank statements and assists in monitoring of cash flow.

Deputy City Clerk

The Deputy City Clerk is an appointed position which provides staff and administrative support to City Council including preparation of City Council meeting agendas under direction of the City Manager. The Deputy City Clerk's

duties are to maintain official city records, conduct city elections, to ensure compliance with the Brown Act and noticing requirements, to file campaign and economic interest statements, and to provide information and service to the public as well as public access of records for review by the community.

Appointed City Departments

- City Manager – Tom Westbrook
- Deputy City Clerk – Anita Rice
- Finance Director – Paul Young
- Police Chief – Kyle Sanders
- Fire Chief – Mike Bachmeyer
- Public Works Director – Scott Miller
- Community Development Director - Vacant
- Human Resources Administrator – Scott Garrison
- Parks and Recreation Director – Karen Shaffer
- Building Inspector – Mitch Dean

CHAPTER 3.

ROLES AND RESPONSIBILITIES OF CITY COUNCIL

Mayor/Mayor Pro Tem Selection and Rotation

The Mayor and Mayor Pro Tem are elected among and by the presiding City Council. The Mayor and Mayor Pro Tem serve at the pleasure of the City Council. Past practice has provided for the transition of the positions to take place annually during the month of December.

The election of the Mayor and Mayor Pro Tem is as follows: The Mayor and Mayor Pro Tem position is elected each year from elected councilmembers. The Mayor Pro Tem typically becomes the Mayor (except in the cases where the Mayor Pro Tem does not run or is not re-elected).

Listing Names of Councilmembers

The order of presenting City Councilmember names follows seniority in the order that Councilmembers rotate into the position of Mayor. The first name listed is the Mayor, followed by the Mayor Pro Tem. Thereafter, Councilmember names are listed by seniority based on their election or appointment, or in alphabetic order in cases of mutual election/appointment dates.

Seating on the Dais

Seating on the dais is within the discretion of the Mayor. Notwithstanding, historically, seating on the dais is based on seniority following the rotation established for the position of Mayor. Protocol dictates that the Mayor Pro Tem sits to the right of the Mayor.

Role of the Mayor

Presiding Officer

The Mayor serves as the presiding officer and acts as Chair at all meetings of the City Council. In this role, the Mayor is responsible for maintaining the order and decorum of meetings. The Mayor may participate in all discussions of the Council in the same manner as any other member. The Mayor does not possess any power of veto. The Mayor may make or second any motion. The Mayor acts as signatory to all documents requiring Council execution. The Mayor is the spokesperson for the Council.

Ceremonial Representative

Responsibility to act as the City Council's ceremonial representative at a public events and functions has been assigned to the Mayor. The Mayor is vested with the authority to initiate and execute proclamations. In the Mayor's absence, the Mayor Pro Tem assumes this responsibility. Should both the Mayor and Mayor Pro Tem be absent, the Mayor will appoint another Councilmember to assume this responsibility.

Role of the Mayor Pro Tem

In the absence of the Mayor, the Mayor Pro Tem will be the Acting Mayor and shall assume all functions and duties of the Mayor at the public meetings.

Role of Councilmembers

City Councilmembers are collectively responsible for establishing policy, adopting the annual budget, and providing goals and direction to the City Manager. Councilmembers shall request the floor from the presiding officer before speaking. The following briefly outlines a generic list of various duties of City Councilmembers.

1. Establish Policy
   a. Adopt goals and objectives
   b. Establish priorities for public services
   c. Approve/amend the operating and capital budgets
   d. Approve contracts and purchase orders
   e. Adopt resolutions

2. Enact Local Laws
   a. Adopt ordinances

3. Supervise Appointed Officials
   a. Appoint City Manager and the City Attorney
   b. Evaluate performance of City Manager and City Attorney
   c. Establish advisory boards and commissions
   d. Make appointments to advisory bodies
   e. Provide direction to advisory bodies

4. Provide Public Leadership
   a. Relate wishes of constituents to promote representative governance
   b. Mediate conflicting interests while building a consensus
   c. Call special elections as necessary
   d. Communicate the City's vision and goals to constituents
   e. Represent the City's interest at regional, county, state, and federal levels

5. Decision-Making
    a. Study problems
    b. Review alternatives
    c. Determine best course of public policy

6. Appointments of elected positions to vacant positions (Clerk and Treasurer)

Media Relations

The City Council maintains open lines of communication with the media providing any City Councilmember the ability to speak with the media on issues. Only the City Manager should speak officially for the City on adopted policies or actions. It is recommended that Councilmembers advise the City Manager when media contact occurs.

Participation in Conferences and Meetings Requiring Travel

It is the City Council's practice to attend professional conferences and meetings related to City business at City expense, subject to City adopted reimbursement policies and with the necessary expenditures included in the annual budget. Such conferences and meetings include economic development missions with the Chamber of Commerce, U.S. Conference of Mayors, National League of Cities and League of California Cities. Alcohol is not included as a reimbursable expense for attending these functions.

Committees, Sub-Committees and Ad Hoc Committees

Committees

The Mayor selects Councilmembers on an annual basis to serve on boards, commissions and committees. City Councilmembers appointed to Boards, Committees and Commission are expected to represent what they consider to be the City's best interest, but they do not represent the final decision of the City Council, nor are they required to obtain City Council approval before voting on the matter before the agency to which they are appointed.

Existing Committees are:

- Local Agency Formation Commission (LAFCO)
- Tehama County Transportation Commission
- Tehama County Solid Waste Management JPA
- Downtown Red Bluff Business Association
- Chamber of Commerce

- Community Action Agency
- Executive Committee -- Tehama County/City of Red Bluff Landfill Management Agency JPA
- Antelope Area Sewer JPA
- Red Bluff Community Center Commission
- Tehama County Continuum of Care Executive Council
- Tehama County Groundwater Commission
- Tehama County Air Pollution District Review Committee

Establishment of Ad Hoc Committees

The City Council may establish an Ad Hoc Committee of the City Council for review of a specific area or specific issue.

Overview of City Documents

For City Council meetings and public dialogue in general, it is important for City Councilmembers to be familiar with several documents. For information on receiving or reviewing any of the following, contact the City Manager.

City of Red Bluff Municipal Code
The Municipal Code contains local laws and regulations adopted by ordinances.

Memoranda of Understanding
These documents are the contracts between employee bargaining groups and the City relative to working terms and conditions.

California State Code
The state laws contain many requirements for the operation of city government and administration of meetings of city councils throughout the state. The City of Red Bluff is a general law city which means it operates under the general laws enacted by the legislature.

Comprehensive Annual Financial Report (CAFR)
The annual financial report includes the year-end financial statements of the City.

General Plan
A state-mandated comprehensive plan addressing the City's long-range planning needs relative to land use, transportation, economic development, and other planning elements.

Annual Operating and Capital Improvement Program Budgets
The documents approved annually by the City Council allocating resources to operations and capital improvements.

Staff Resources and Equipment

Staff Resources
The City Manager is the liaison between the Council and City staff and determines the protocol for the relationship between Councilmembers and staff. General requests for information may be made directly to Department Heads who will advise the City Manager. The information requested will be copied to all members of Council so that each member may be equally informed. City Councilmembers shall not contact lower-level staff directly.

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

Ride-a-longs with staff and Councilmembers are permitted so that Councilmembers can experience job duties of various Departments and educate themselves regarding city operations. However, Councilmembers shall not provide direction to any subordinate staff of the City Manager at any time.

Mail and Deliveries
Individual mailboxes are maintained for each Councilmember by the City Manager's staff. The City Manager or his or her designee will open all mail. In the event mail is marked or deemed personal and/or confidential, the City Manager will discuss the item with the Councilmember for the appropriate disposition.

Meeting Rooms
Use of conference rooms may be scheduled with the Office of the City Manager.

Office Equipment
To enhance Councilmembers' 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. For those members of Council who do not have or do not wish to use personally owned computers for City business, the City will provide a computer and standard business software. When individual Councilmembers have completed their term of office, IT staff will retrieve City computers and software. City equipment shall be used solely for city purposes and to conduct business on behalf of the City. No personal use of assigned equipment shall be authorized.

City Council Meetings

The Council holds formal meetings in the Council Chamber of the City Hall on the first and third Tuesday of each month at six o'clock (6:00) P.M. and on such other days and times as necessary. A special meeting may be ordered in accordance with the provisions of the Government Code. When the day for any formal meeting of the council falls on a legal holiday, the meeting is not held on

such holiday but is held at the same hour on the next succeeding Tuesday, unless cancelled by the City Council.

Other Meetings

The City Council may also schedule other meetings as necessary to conduct City business. Such meetings include special, adjourned or emergency meetings. If a City Councilmember is unable to attend a meeting at City Hall, he or she may participate via teleconference which is further explained in this section.

Special Meetings
If there is a need to conduct City business and it cannot wait until the time established for the regular formal council meeting, the City Council can hold a special meeting. A special meeting is a meeting that is held at a time or place other than the time and place established for regular meetings (i.e. formal or informal meetings described above).

Adjourned Meetings
If the City Council has not concluded the business items in its agenda at a regular meeting (i.e. formal or informal meeting) or at a special meeting, the City Council can adjourn that meeting to another time.

Emergency Meetings
The City Council can call an "emergency" meeting when prompt action is needed to address certain emergencies.

Teleconferencing
"Teleconferencing" may be used as a method for conducting meetings whereby members of the City Council may be counted towards a quorum and participate fully in the meeting from remote locations. There are, however, certain requirements that must be followed in order to comply with state law regarding open and public meetings.

Communications with Applicants

From time to time the City Council will be called upon to exercise its quasi-judicial function. In other words, the City Council will sit as a "judge" in determining whether a particular land use entitlement, such as a variance, subdivision map or a conditional use permit, is appropriate for a particular piece of property. Generally, the Council will hear and determine appeals of quasi-judicial decisions of the Planning Commission.

Applicants or other interested persons in such decisions may want to meet with individual members of the City Council. In those instances, individual meetings with an applicant and/or other interested person are inappropriate as the Council is limited to only considering evidence presented as part of the public hearing. In other matters, which may be legislative in character, meetings with applicants and other interested

parties shall take place in City Hall with a member of City staff present.

If a Councilmember does receive relevant information about a quasi-judicial matter outside of the public hearing, the Councilmember is required to publicly announce the information learned at the formal hearing and before testimony begins. This allows the affected parties to react to the information you have heard, give you relevant background and, sometimes, correct erroneous information.

Public Comment at Council Meetings

Any person desiring to address the council during a formal meeting shall first secure the permission of the presiding officer.

Each person desiring to address the council may furnish their name and address to the City Clerk but this is not a requirement to address the council. When called upon by the presiding officer, the person shall come to the microphone, state their name in an audible tone of voice for the record, and shall limit their remarks as directed by the presiding officer with the consent of the council. All remarks shall be addressed to the Council as a body and not to any member thereof. No person, other than a Councilmember and the person having the floor, shall be permitted to enter into any discussion without the permission of the presiding officer. Whenever any group of persons wishes to address the council on the same subject matter, it shall be proper for the presiding officer to request that a spokesperson be chosen by the group to address the Council and, in the event additional matters are to be presented at the time by any other member of such group, to limit the number of persons so addressing the council in order to avoid unnecessary repetition before the Council

Organization of Formal City Council Meetings

A. Call to Order
B. Pledge of Allegiance
C. Reportable Closed Session Item(s)
D. Conflict of Interest Declaration
E. Citizens Comments
F. Staff Items
G. Commission(s) Reports
H. Proclamations/Presentations
I. Consent Calendar
J. Regular Agenda
K. Committee Reports/Council Comments
L. Additional Council Comments
M. Future Agenda Items
N. Adjournment

Agendizing Topics for Discussion

The City Manager shall prepare the agenda of all such matters according to the order of business and cause a complete copy of such agenda, with related material, to be delivered to each City Councilmember, the City Clerk and the City Attorney on the Friday proceeding the day of a regular meeting. The agenda shall be available for public inspection in the City Manager's Office at least seventy-two (72) hours prior to the meeting. Complete agenda's and supporting documents shall be made available on the City's website.

CHAPTER 4.

Code of Conduct
for Members of City Council, Boards, Commissions and Committees

Preamble

The residents and businesses of Red Bluff are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. 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 politics affecting the operations of government;
- Public officials be independent, impartial and fair in their judgment and actions;
- Public office be used for the public good, not for personal gain; and
- Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Red Bluff City Council has adopted a Code of Conduct for members of the City Council and the City's commissions to assure public confidence in the integrity of local government and its effective and fair operation.

This Code of Conduct describes the manner in which Councilmembers should treat one another, city staff, constituents, and others they come into contact with in representing the City of Red Bluff.

The constant and consistent theme through the conduct guidelines is "respect." Councilmembers experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. These guidelines help guide Councilmembers to do the right thing in even the most difficult situations.

It is also recognized that Councilmembers have the duty to conduct City affairs in a businesslike manner, assuring timely consideration of matters before them and thoughtful expeditious decision-making. These guidelines incorporating best practices among city governments can help guide Councilmembers to contribute to this end.

1. 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 of Red Bluff 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 and the City's commissions.

2. **Comply with the Law**

Members shall comply with the laws of the federal government, the State of California and the City of Red Bluff in the performance of their public duties. These laws include but are not limited to: the United States and California constitutions; the City Municipal Code, laws pertaining to conflict of interest, elections campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances, resolutions and policies. Members shall not solicit political support from City Staff (financial contributions, display of signs, name on support list, etc.).

3. **Conduct of Members**

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Council and commissions, the staff or the public.

4. **Respect for Process**

Members shall perform their duties in accordance with the processes and rules of order established by the City Council and commissions governing the deliberation of public policy issues, the involvement of the public, and the implementation of policy decisions of the City Council by City staff.

5. **Conduct at 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 the meetings. Members shall commit to practice civility and decorum in discussions and debates. Members shall commit to honoring the role of the Chair in maintaining order, keeping discussion on track, and focusing discussion on agenda items at hand. Members shall avoid debate and argument with the public. Members shall not engage in personal attacks of any kind under any circumstance.

6. **Decisions Based on Merit**

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. **Communication**

Members shall publicly share substantive information that is relevant to a matter under consideration by the Council or commission, which they may have received from sources outside of the public decision-making process.

8. **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.

9. **Gifts and Favors**
Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are 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.

10. **Confidential Information**
Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

11. **Use of Public Resources**
Members shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

12. **Representation of Private Interests**
In keeping with their role as stewards of the public interest, members of the Council shall not appear on behalf of the private interests of third parties before the Councilor any commissions or proceedings of the City, not shall members of commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

13. **Advocacy**
Members shall represent the official policies of positions of the City Council or commissions to the best of their ability when designated as delegates. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Red Bluff, not will they allow the inference that they do.

14. **Policy Role of Members**
Members shall respect and adhere to the council-manager structure of city government as provided by state law and City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, commission, and City Staff.

Members therefore shall not interfere with the administrative functions of the City or the professional duties of City Staff; nor shall they impair the ability of staff to implement

Council policy decisions.

Members should refrain from:

- Disrupting staff from the conduct of their jobs
- Involvement in administrative functions
- Attending staff meetings unless requested by staff.

15. Independence of Boards and Commissions

Because of the value of the independent advice of commission to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of commission proceedings.

16. Positive Workplace Environment

Members shall support the maintenance of a positive and constructive workplace environment for City employees and for residents 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.

17. Political/Campaign Contributions

A member or candidate for City Council shall not solicit contributions or endorsements from City employees. This provision is not intended to interfere with an employee's right to endorse or contribute on his/her own or to prohibit soliciting contributions or endorsements from employee bargaining units.

A member or candidate for City Council may solicit campaign contributions in the manner prescribed by the Political Reform Act or State of California law.

Implementation

As an expression of the standards of conduct for members expected by the City, this Code of Conduct is intended to be self-enforcing. It, therefore, becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientation for candidates for City Council, applicants to commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming that they read and understand the City of Red Bluff Code of Conduct.

This Code shall be reviewed annually by the City Council and City commissions at the annual organization and procedures meeting of each body. At such meeting, Councilmembers and Commissioners shall sign a statement affirming they have read and understand the Code of Conduct.

The Red Bluff Code of Conduct expresses standards of ethical conduct expected for members of the City Council and commissions. 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.

The chairs of commissions and the Mayor have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Conduct are brought to their attention.

Enforcement

The City Council has the authority, but not the legal obligation, to monitor each Member's adherence to these Protocols and to take corrective action for violations, as provided below.

The City Council may sponsor or require periodic training opportunities for Members to become more familiar with the Policy and the legal framework for the Council's various Commissions.

Under California law, the Council does not have the legal authority to remove Members elected or appointed to the City Council or to otherwise deprive them of their office. However, a majority of the Councilmembers may remove a Councilmember from all Council honorary and/or ceremonial positions and ad-hoc and standing committees, as well as from positions with other governmental agencies or other organizations they hold by virtue of appointment by the City Council.

All Members take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State and the Federal government. In addition, Members commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery or other violation of the law.

Where any Board or Commission Member, Councilmember, City employee, or resident of the City believes that a Member has violated these Policy Manual or their Oath of Office, they may file a written complaint with the Deputy City Clerk who will then provide it to the City Manager and City Attorney. The complaint shall be considered confidential until the City Attorney has determined the appropriate next action.

Within thirty (30) days of receipt of a Complaint, the City Manager and City Attorney shall review the complaint. If in the City Attorney's determination, the complaint alleges a violation of law, the City Attorney shall determine the appropriate next steps.

For example, a complaint alleging theft of public funds or bribery, or a complaint from a purported whistle-blower (pursuant to California Labor Code Section 1102.5) may be forwarded to the Office of the District Attorney. Complaints alleging other violations of the law may be forwarded to the City's risk-management pool for a determination. The City Attorney shall have the authority to retain an outside investigator to investigate complaints from employees alleging violations of the Fair Employment and Housing Act.

All complaints, including complaints alleging violations of these Policies and any other City policy or procedure, at the appropriate point in the process as determined by the City Attorney shall be forwarded to the City Council for consideration in open session. The City Council may order an investigation.

The City Council may use any of the following to respond to any and all violations of these policies: (i) a warning (ii) a written reprimand; or (iii) censure. In addition, the City Council shall have the authority to remove Board or Commission Members from office as a remedy for violations.

The City Council, Boards and Commissions shall use the following procedure to consider complaints forwarded by the City Attorney:

a) Receipt of Complaint. Upon receipt of the complaint, the Council will hold a public meeting at which it will determine whether the complaint should be dismissed for the reasons stated in section b)(i), below, or added to a future agenda for further discussion and determination. if the complaint is added to a future agenda, the subject Member shall have the opportunity to address the allegations in the complaint at the future meeting.

b) Determination. The Council shall make a determination on the allegations in the complaint based on the following:

    (i) Dismissal. Where the Council determines that no violation occurred or that only a trivial violation occurred, or that the complaint does not have merit for any other reason, the Council may dismiss the complaint.

    (ii) Reprimand. The Council may adopt a verbal or written statement reprimanding the subject Member for their conduct. The subject Member may file a rebuttal to the Reprimand with the City Clerk which will become a matter of public record.

    (iii) Censure. Where the Council, based on the Report, any statement from the subject Member, and other evidence accepted at a public hearing of the matter, determines that there is substantial evidence that the Member has materially violated one or more provisions of these Protocols, and that such violation(s) impugn the integrity or dignity of the City or that such violations are egregious or chronic in nature, then the Council may adopt a resolution censuring the subject member by condemning their actions, removing the Member from all appointive positions representing the City in front of other governments and agencies, demoting them if they hold a position of Mayor, Mayor Pro Tem, Chairman or Vice Chairman, stating that the violations shall cease, and demanding corrective actions. The subject Member may file a rebuttal to the Censure with the Deputy City Clerk which will become a matter of public record.

c) Commissioner and Board Member Removal from Office.

(i) Planning Commissioner, Parks and Recreation Commissioner and Airport Commissioner - Notwithstanding any of the provisions, the City Council may remove a Planning Commissioner, Parks and Recreation Commission and Airport Commissioner for violation of these policies. Nothing in these policies affects or diminishes such power nor vests Planning Commissioners, Parks and Recreation Commission and Airport Commission with any additional rights, including, without limitation, rights of procedural due procession.

(ii) Other Commissioners and Board Members - Notwithstanding any of the provisions, the City Council may remove any commissioner or board member appointed by the City Council. Nothing in these policies affects or diminishes such power nor vests such commissioners or board members with any additional rights, including, without limitation.

CHAPTER 5 – A.

STANDARD MEETING PROCEDURES

A. Type of meetings

Regular Meetings: All regular business of the City Council should be conducted at the City Council's regular, Bi-monthly meetings. Once a regular meeting is adjourned, the Council will not meet again until the next regular meeting, unless the Council adjourns to a different time or unless a special meeting is called, as described below. Field trips and "study sessions" occurring on a date other than a regular meeting date are conducted as adjourned meetings or special meetings.

Adjourned Meetings: At the conclusion of a regular meeting, the Mayor may adjourn the meeting to a specific time, place and date. This allows for an extension of the regular meeting. If a regular meeting of the City Council is adjourned to another time, the City Clerk shall post a notice of the adjourned meeting. Adjourned meetings can be again adjourned to a date, time and place specific; however, once any meeting is finally adjourned, it cannot be reconvened.

Special Meetings: Special meetings may be called by the Mayor or by a majority of the City Council under the following guidelines:

- Written notice must be delivered personally or by any other means to each member of the Council, the City Clerk, and the local media, at least 24 hours prior to the meeting. Notices must also be posted, at least 24 hours prior to the meeting, at the designated posting places in the City.

- The notice must contain the subjects of the meeting and only those subjects may be considered at the special meeting.

B. Conduct of Meetings

Mayor: The Mayor presides at all City Council meetings. The Mayor Pro Tem serves in the absence of the Mayor.

City Clerk: The City Clerk takes and prepares minutes of each meeting and is responsible for ensuring that meeting notices are properly posted or delivered.

Conduct of Hearings: The general manner of conducting hearings is within the control and discretion of the Mayor. After sufficient discussion and presentation of a matter, the Mayor or any member entitled to vote upon the matter may introduce a motion to decide the matter.

Reopening, of Hearings: In general, no hearing that has once been closed may be reopened without additional notice in the same manner as the original hearing. A hearing may be reopened at the same meeting it was closed if the Council finds that

everyone present during the original proceeding is still present at the time of the reopening and the hearing is reopened before the Council takes up another matter.

Voting: A quorum consists of a majority of the members of the City Council. Unless a particular rule requires a minimum of three votes or a supermajority, a majority of those voting is sufficient to pass a matter (e.g., a 2-1 vote, with two absences or abstentions is sufficient to approve most agenda items). Common minimum majority requirements are these: three votes are required to pass a resolution, an ordinance or to approve an expenditure of money; a two-thirds majority is required to adopt an urgency ordinance or to find that a matter can be appropriately added to an agenda because the need to consider the matter came to the City's attention after the posting of the agenda.

The Council acts in a “quasi-judicial” or "adjudicative" capacity when it applies previously established - rules to a particular set of facts, as in approving a CUP. The Council acts in a "legislative" capacity when it adopts rules and regulations (typically, ordinances) for future application. The distinction is not always obvious, and the City Attorney can guide you as necessary.

C. Import of Findings in quasi-judicial Actions

From time to time the Council will be called upon to exercise its quasi-judicial function. In other words, the Council will sit as a "judge" in determining whether a particular land use entitlement, such as a variance, subdivision map or a conditional use permit, is appropriate for a particular piece of property. Generally, the Council will hear and determine appeals of quasi-judicial decisions of the Planning Commission. The following discussion, partially excerpted from a publication by the State Office of Planning and Research, discusses the importance of findings.

A. Topanga: the cornerstone for findings

Any discussion of findings and decisions affecting land use must begin with the seminal case in the area, Topanga Association for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506 (1974). In Topanga, the California Supreme Court defined findings, explained their purposes, and discussed the circumstances in which they are required.

1. Definition

The Topanga court defined findings as legally relevant sub-conclusions which expose the agency's mode of analysis of facts, regulations, and policies, and bridge the analytical gap between raw data and ultimate decision (Topanga, supra, at 515 and 516). In other words, findings are the legal footprints local administrators and officials leave to explain how they applied the facts to established standards and arrived at a decision.

2. **Purpose**

The Topanga court outlined four purposes for making findings, two of which are relevant mainly to the decision-making process, and two of which are relevant to judicial review functions. Findings should:

- Provide a framework for making principled decisions, enhancing the integrity of the administrative process;

- Help make analysis orderly and reduce the likelihood that the agency will randomly leap from evidence to conclusions;

- Enable the parties to determine whether and on what basis they should seek judicial review and remedy; and,

- Inform a reviewing court of the basis for the agency's action.

3. Circumstances requiring findings

While the four purposes seem clear enough, state law has not clearly distinguished between the situations that require findings and those that do not. Absent a specific legislative requirement for findings, the courts determine when they are necessary. In general, case law has required findings for land use decisions that are quasi-judicial. In this type of decision, a reviewing body holds a hearing, takes evidence, and bases its decision on the evidence. The action involves applying a fixed rule, standard, or law to specific facts and a specific parcel of land. Examples include variances, use permits, and tentative subdivision and parcel maps.

By way of comparison, findings are not necessary for legislative decisions unless specifically required by statute (Ensign Bickford Realty Corp. v. City Planning City Council, 68 Cal. App. 3d 467 (1977)). In contrast with a quasi-judicial act, which involves the application of an existing rule to a specific factual situation, a legislative act generally involves the formulation of a rule to be applied to all future cases. Examples are the adoption or amendment of a general plan or zoning ordinance. Even though a zone change or general plan amendment may be specific to a particular parcel, it is still a legislative act because its underlying effect is legislative in nature, regardless of the size or geographic scope of the property affected (Arnel Development Company v. City of Costa Mesa, 28 Cal. -3d 5 11 (1980)).

B. Preparation of findings: a question of timing

As discussed above, Topanga states that findings should enhance the integrity of the administrative process, help make analysis orderly, and reduce the likelihood that the agency will randomly leap from evidence to conclusions. This requires the decision makers to identify the reasons supporting a decision prior to taking action. However, in the daily reality of acting on a myriad of different land use applications and other

matters, the decision-making body may find it difficult to formulate detailed findings and to reduce them to writing at the point of the decision. Therefore, many cities have their staffs prepare proposed findings for the decision makers to consider and then use, revise or reject. Both the City Council and the Planning Commission typically operate in this manner. The suggested findings can help the decision makers identify the appropriate information, policies, and regulations governing the proposed project and guide them in making the necessary findings. Of course, before adopting any staff-prepared findings, the decision makers must objectively review and, where necessary, revise the findings to make sure that they accurately reflect both the evidence in the record (which is likely to be supplemented in the hearing after the presentation of the staff report) and the decision makers' own conclusions.

Where the opportunity exists, some local land use decision-making bodies take tentative action and then direct staff to draft a written statement of the findings based on the evidence and the deliberative discussion that took place during the public hearing. The staff draft can then be reviewed for adoption as the agency's findings at a later meeting. This method of preparing findings often provides staff with a better opportunity to carefully review the entire record, including the evidence presented during the public hearing before preparing proposed findings for the decision-making body. However, this method also necessarily delays the final decision on projects until the decision-making body reconvenes to consider the findings.

C. Summary: bridging the gap

California courts have demonstrated their concern for rational and open land use decisions that protect the public interest. The Topanga court offered four purposes for findings, all emphasizing these concerns. The now familiar language of that court requiring cities to "bridge the analytical gap between raw data and ultimate decision" leaves no doubt that decision makers are to follow an orderly path of logic before arriving at decisions. While the political reality of making land use decisions involves compromises at times, the political reality must accommodate rational and dispassionate deliberation in the decision-making process.

The process of making land use decisions has its rough edges: economic impacts, election campaigns, tender egos, and neighborhood conflicts. Making findings as an integral part of the decision-making process will not guarantee that all of the rough edges will be smoothed out. However, if decision makers take findings seriously, then they can reduce public doubts about the motivation and wisdom of their decisions. Using findings builds an excellent defense for local officials' decisions and, ultimately, more justly serves the public purposes of regulating land use.

D. Specific actions requiring findings

1. Conditional Use Permit

A Conditional Use Permit (or CUP) is an application filed in order to establish a use (in a zone district) which is not automatically permitted. The Conditional Use Permit procedure was created in order to place controls upon certain uses to ensure that the uses will not adversely affect neighboring properties. Councilmembers should note that uses are either automatically permitted, conditionally permitted, or prohibited. A prohibited use cannot be allowed through a Conditional Use Permit.

2. Variance

A Variance is an application requesting an exception from a standard required by the zoning ordinance. For example, an applicant may file for a variance to exceed the height restriction on a house or to reduce the number of parking spaces required for a restaurant. A variance may not be issued to permit a use which is not otherwise permitted by the applicable zoning district. (Government Code Section 65906)

In granting a variance, the following specific findings must be made: (1) special circumstances exist with regard to the subject property, including size, shape, topography, location or surroundings; (2) due to such special circumstances, the strict application of the zoning ordinance would deprive the property owner of privileges enjoyed by other property owners in the vicinity and the same zone district; and (3) granting of the variance will not constitute a special privilege.

3. Tentative map or parcel map

A Tentative Map or Parcel Map (subdivision map) is a map recording the division of land for the purpose of sale, lease, or financing, and is governed by the Subdivision Map Act. A subdivision of five or more parcels requires a tentative and final map. A subdivision of four or fewer parcels requires just a parcel map.

In granting a Tract Map or Parcel Map, the following specific findings must be made: (1) the proposed map is consistent with applicable general and specific plans; (2) the design or improvement of the proposed subdivision is consistent with applicable general and specific plans; (3) the site is physically suitable for the type of development; (4) the site is physically suitable for the proposed density of development; (5) the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; (6) the design of

the subdivision or type of improvements is not likely to cause serious public health problems; (7) the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision; and (8) the City Council has considered the effect of the tract map or parcel map on the housing needs of the region as set forth in the City's Housing Element.

4. Zone change

A Zone Change is a request - generally by a private individual but occasionally by the City - to rezone a property from one zone designation to another designation. For example, a property owner may apply for an ordinance to rezone a property from a residential zone to a commercial zone. Traditionally, a zone change is considered to be a legislative action that requires no findings other than a finding that the new zoning designation is consistent with the general plan.

D. Agenda Preparation

City Council agendas are prepared by and at the discretion of the City Manager, who is responsible for determining which items will be brought before the City Council.

Agendas must be posted no later than 72 hours in advance of all regular or adjourned meetings and no later than 24 hours in advance of special meetings. All agendas are available for public review, although City Council agenda packets will sometimes contain memoranda from the City Attorney's office stamped "Confidential" which are attorney-client privileged documents that are not made available to the public.

CHAPTER 5 – B.

AGENDA ITEMS
PLACING ITEMS ON AGENDA BY COUNCILMEMBERS

I. Purpose

The City Council desires to formalize the policy involving the manner in which a City Councilmember places an item or items on a City Council agenda. As such, this policy reflects the City Council's position relative to placing an item on a City Council agenda.

II. Definitions

For the purpose of this policy:

The Council holds meetings in the Council Chamber of the City Hall on the first and third Tuesday of each month at six o'clock (6:00) p.m. and on such other days as necessary.

III. Policy

1. Any City Councilmember may request an item be placed on a future meeting agenda.

2. The City Councilmember shall present the item to the City Council at the next meeting.

3. Introduction of an item may take place in the Future Agenda item portion of the City Council Meeting Agenda.

4. If a majority of City Council agree to place the Councilmembers item on an upcoming meeting agenda it will be located in the Regular Agenda items.

CHAPTER 5 – C.

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

The Ralph M. Brown Act (California Government Code Section 54950, et seq.) commonly known as the "Brown Act," is California's "sunshine" law for local government. In a nutshell, the statute requires local government business to be conducted at open and public meetings, except in certain limited situations.

A. Application to "Legislative Bodies"

The Brown Act applies to "legislative bodies" of cities and other local agencies. The term "legislative body" includes the City Council and any commission, committee, board or other body of the local agency, whether permanent or temporary, decision making or advisory, that is created by formal action of a legislative body (Section 54952).

Standing committees of a legislative body are subject to the Brown Act if they have either a "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body. Standing committees make regular recommendations on a specific subject.

The Brown Act does not apply to an advisory committee of a legislative body if the advisory committee is composed solely of members of the body and it does not have a continuing subject matter jurisdiction or a meeting schedule fixed by formal action of a legislative body. Such advisory committees generally serve only a limited or single purpose. They are not perpetual and they are dissolved when their specific task is completed.

Advisory and standing committees may, but are not required to, have regular meeting schedules, but must post an agenda 72 hours in advance of all regular meetings.

Governing boards of private entities are subject to the Brown Act under certain circumstances. A private entity's governing board constitutes a Brown Act legislative body if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the legislative body; or (ii) the private entity receives funds from a local agency and its governing board includes a member of the legislative body who was appointed by the legislative body to the governing board as a full voting member (Section 54952).

Finally, the Brown Act applies to persons who are elected to serve as members of a legislative body of a local agency even before they assume the duties of office (Section 54952.1). Under this provision, the statute is applicable to newly elected, but not-yet-sworn-in, City Councilmembers.

B. Definition of "Meetings" and Exceptions to Meetings

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

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

In plain English, this means that a meeting is any gathering of a majority of City Councilmembers (or commissioners) to hear or discuss any item of City business or potential City business.

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

1. The individual contact exception

Conversations, whether in person, by telephone or other means, between a legislative body member and any other person do not constitute a meeting (Section 54952.2(c)(1)). However, such contacts may constitute a "serial meeting" in violation of the Brown Act if they are part of a series of individual contacts with other members of the legislative body for the purpose of "developing a collective concurrence." See, Section E as to what constitutes a serial meeting.

2. The seminar or conference exception

The attendance by a majority of the legislative body at a seminar, conference or similar educational gathering is generally exempted from Brown Act requirements (Section 54952.2 (c)(2)). The seminar or conference must be open to the public and must involve issues of general interest to the public or to cities. A League of California Cities seminar is an example of an educational gathering that fulfills these requirements. However, this exception will not apply to a conference or seminar if a majority of legislative body members discuss among themselves items of specific business relating to their own local agency other than as part of the scheduled program.

3. The community meeting exception

A majority of legislative body members may attend privately-sponsored neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings at which issues of local interest are discussed (Section 54952.2(c)(3)). In order to fall within this exception, the community meeting must be "open and publicized." Attendance by a majority of the legislative body at a homeowner's association meeting that is limited to the residents of a particular development and only publicized among members of that development would not qualify for this exemption. Also, as with the other meeting exceptions, a majority of legislative body members cannot discuss among themselves items of business of their own local agency other than as part of the scheduled program.

4. The other legislative body exception

A majority of members of any legislative body may attend meetings of other legislative bodies of their local agency, or of another local agency, without treating such attendance as a meeting of the body (Section 54952.2(c)(4)). Of course, as with other meeting exceptions, the legislative body members are prohibited from discussing items of business of their local agency among themselves other than as part of the scheduled meeting.

5. The social or ceremonial occasion exception

A majority of the legislative body members may attend purely social or ceremonial occasions (Section 54942.2(c)(5)). This exception only applies, though, if a majority of legislative body members do not discuss among themselves items of business of their local agency.

6. The standing committee exception

Members of a legislative body who are not members of a standing committee of that body may attend a meeting of the committee without making the gathering a meeting of the fill legislative body itself (Section 54952.2(c)(6)). The standing committee exception addresses the situation where the attendance at a standing committee meeting by legislative body members who are not standing committee members would create a gathering of a majority of the legislative body (and therefore, a "meeting" of the legislative body). In order to fall within the standing committee exception, the legislative body members who are not members of the standing committee may attend only as "observers." This means that such persons should not speak at the standing committee's meeting, sit in their usual seat on the dais or otherwise participate in the meeting. To avoid this awkward situation, we generally recommend that, if a standing committee meeting is likely to be attended by other legislative body members, then the meeting should be agendized as a meeting of the whole legislative body. This will allow participation by all the legislative body members.

C. Permitted Locations of Meetings and Teleconferencing

The Brown Act generally requires all meetings of a legislative body to occur within the boundaries of the local agency (Section 54954(b)). There are exceptions to this rule, however, such as one to allow meetings with a legislative body of another local agency in that agency's jurisdiction. Meetings held outside of a local agency's boundaries pursuant to an exception still must comply with agenda and notice requirements, which are discussed in Section F below.

"Teleconferencing" may be used as a method for conducting meetings whereby members of a legislative body may be counted towards a quorum and participate fully in the meeting from remote locations (Section 54953(b)). The following requirements apply: the remote locations must be connected to the main meeting location by telephone, video or both; the notice and agenda of the meeting must identify the remote locations; the remote locations must be posted and accessible to the public; all votes must be by roll call; and the meeting must in all respects comply with the Brown Act, including participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. The teleconferencing rules only apply to members of the legislative body; they do not apply to staff members, attorneys or consultants who can participate remotely without following the posting and public access requirements.

D. ADA Compliance

Pursuant to Section 54953.2, all meetings of a legislative body, other than closed session meetings or parts of meetings involving a closed session, are required to be held in a location and conducted in a manner that complies with the Americans with Disabilities Act of 1990. In addition, if requested, the agenda and documents in the agenda packet shall be made available in alternative formats to persons with a disability (Section 54954.1). 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 meeting. (Section 54954.2).

E. Serial Meetings

The Brown Act addresses certain contacts between individual legislative body members. As explained in Section B above, the individual contact exception to the "meeting" definition specifically states that nothing in the statute is intended to impose requirements on individual contacts or conversations between a legislative body member and any other person (Section 54952.2(c)(1)). Despite this exception, however, the Brown Act does prohibit a series of such individual contacts (commonly referred to as a "serial meeting") if they result in a majority of legislative body members developing a "collective concurrence as to action to be taken on an item by the members of the legislative body." (Section 54952.2(b)).

A serial meeting is a series of meetings or communications in which ideas are exchanged among a majority of a legislative body through either one or more persons acting as intermediaries or through use of telephone answering machine, e-mail or voice mail. A serial meeting can occur even though a majority of legislative body members never gather in a room at the same time, and it typically results in one of two ways. The first is when a staff member, a legislative body member, or some other person individually contacts a majority of legislative body members and shares ideas among the majority ("I've talked to members A and B and they will vote 'yes.' Will you?"). Alternatively, member A calls member By who then calls member C, and so on, until a majority of the legislative body has reached a collective concurrence on a matter.

In order to avoid inadvertent violation of the serial meeting rule, the following guidelines should be followed. These rules of conduct apply & when a majority of a legislative body is involved in a series of individual contacts or communications, whether with local agency staff members, constituents, developers, lobbyists or other members of the legislative body.

1. Contacts with staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. To avoid development of a collective concurrence in contacts with staff:

- Staff briefings of legislative body members should be "un-directional" when done on an individual basis for a majority of the legislative body members. This means that information should flow from staff to the member, and the member's participation should be limited to asking questions and acquiring information. Otherwise, multiple members could separately give staff direction thereby causing staff to shape or modify their ultimate recommendations in order to reconcile the views of the various members, resulting in a collective concurrence.

- A legislative body member should not ask staff to describe the views of other legislative body members, and staff should not volunteer those views if known.

- Staff may present their views to a legislative body member during an individual contact, but staff should not ask for that member's views. Additionally, that member should avoid disclosing his or her views unless it is absolutely clear that staff is not discussing the matter with a majority of the legislative body.

2. Contacts with constituents, developers and lobbyists

A constituent, developer or lobbyist can also inadvertently become an intermediary who causes an illegal serial meeting. Such persons' unfamiliarity with the requirements of the

Brown Act may aggravate this potential problem because they may expect a legislative body member to be willing to commit to a position in a private conversation in advance of a meeting. To avoid development of a collective concurrence in contacts with constituents, developers and lobbyists:

- State the ground rules "up front." Ask if the person has talked, or intends to talk, with other members of the legislative body about the same subject. If the answer is "yes," then make it clear that the person should not disclose the views of other legislative body members during the conversation.

- Explain to the person that you will not make a final decision on a matter prior to the meeting. Here is our suggested explanation: "State law prevents me from giving you a commitment outside a meeting. I will listen to what you have to say and give it consideration as I make up my mind."

- Do more listening and asking questions than expressing opinions. If you disclose your thoughts about a matter, counsel the person not to share them with other members of the legislative body.

3. Contacts with fellow members of the same legislative body

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

We recognize that these suggested rules of conduct may seem unduly restrictive and impractical and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act's goal of achieving open government. If you have questions about compliance with the statute in any given situation, please contact the Fair Political Practices Commission (FPPC) for advice.

F. Notice and Agenda Requirements

1. Time of notice and content of agenda

The Brown Act requires that legislative bodies publicly post agendas prior to their meetings (Sections 54954.2, 54955 and 54956).

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings (Section 54954(a)). A "regular" meeting is a meeting that occurs on the legislative body's established meeting day. Agendas for a regular meeting must be publicly posted 72 hours in advance of the meeting (Section 54954.2(a)) and must contain a brief general description of each item of business to be transacted or discussed (Section 54954.2(a)). The description need not exceed 20 words.

A "special" meeting is a meeting that is held at a time or place other than the time and place established for regular meetings. For special meetings, the "call and notice" of the meeting and the agenda must be posted at least 24 hours prior to the meeting (Section 54956). Additionally, each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as facsimile, e-mail or U.S. mail) at least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and, if they have, then that notice must be given at the same time notice is provided to members of the legislative body.

An "emergency meeting may be called to address certain emergencies, such as a crippling disaster, without complying with the 24-hour notice requirement. Certain requirements apply for notifying the press and for conducting closed sessions as part of those meetings, and except as specified, all other rules governing special meetings apply. (Section 54956.5).

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

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

2. Action and discussion on non-agenda items

The Brown Act also ensures the public's business is conducted openly by restricting legislative bodies' ability to deviate from posted agendas. The statute affords legislative bodies' limited authority to act on or discuss non-agenda items at regular meetings but forbids doing so at special meetings.

As a rule, a legislative body may not act on or discuss any item that does not appear on the agenda posted for a regular meeting (Section 54954.2). This rule does not, however, preclude a legislative body from acting on a non-agenda item if it determines by a majority vote that an emergency exists. For purposes of this exception, the term "emergency situation" refers to work stoppages or crippling disasters that severely impair public health, safety or both. The rule also does not preclude a legislative body from acting on a non-agenda item that the body finds came to the local agency's attention subsequent to the agenda posting and requires immediate action. In order to utilize this exception, the legislative body must make these findings by a two thirds vote of those present (by unanimous vote if less than two-thirds of the body is present). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required.

Legislative bodies may, notwithstanding the general rule set forth above, discuss non-agenda items at a regular meeting pursuant to certain exceptions. These exceptions are as follows:

- Legislative body members or staff may briefly respond to statements made or questions posed by persons during public comment periods;
- Legislative body members or staff may ask a question for clarification, make a brief announcement or make a brief report on their own activities;
- Legislative body members may, subject to the procedural rules of the body, provide a reference to staff or other resources for factual information;
- Legislative body members may, subject to the procedural rules of the body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and
- Legislative body members may, subject to the procedural rules of the body, take action to direct staff to place a matter of business on a future agenda.

The legislative body may not discuss non-agenda items to any significant degree under these exceptions. This means there should not be long or wide-ranging question and answer sessions on non-agenda items between the legislative body and the public

or between the legislative body and staff. It is important to follow these exceptions carefully and construe them narrowly to avoid tainting an important and complex action by a non-agendized discussion of the item.

The Brown Act contains even more stringent regulations to restrict action and discussion on non-agenda items at special meetings. In particular, the statute mandates that only business that is specified in the "call and notice" of the special meeting may be considered by the legislative body (Section 54956). There are no exceptions to this rule.

G. Public Participation

1. Regular meetings

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any matter that is within the subject matter jurisdiction of the legislative body (Section 54954.3(a)). As to items on the agenda, the Brown Act requires a legislative body to allow members of the public to comment on agenda items either before or during the body's consideration of that item (Section 54954.3(a)).

Red Bluff accomplishes both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Public comment on public hearing items must be taken during the meeting.

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

2. Public comments at special meetings

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

3. Limitations on the length and content of public comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. Typical time limits restrict speakers to three or five minutes, Red Bluff has a practice of allowing three minutes. A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance (Section 54954.3(b)). However, there should not be time limits per item for any quasi-judicial matter, such as a use permit application, because such a restriction could result in a violation of the due process rights of those who were not able to speak to the body.

The Brown Act precludes a legislative body from prohibiting public criticism of the policies, procedures, programs, or services of the local agency or the acts or omissions of the body (Section 54954.3(c)). This does not mean that a member of the public may say anything; the public's comments must be within the subject matter jurisdiction of the local agency.

A legislative body also may adopt reasonable rules of decorum that preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of its meetings (Section 54954.3(b)). The right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the free speech rights of speakers by suppressing opinions relevant to the business of the legislative body.

Finally, in some circumstances, the use of profanity may be a basis for stopping a speaker. It will depend, however, upon what profane words or comments are made and the context of those comments. Therefore, no one should be ruled out of order for profanity unless the language both is truly objectionable and causes a disturbance or disruption in the proceeding.

4. Additional rights of the public

The Brown Act grants the public the right to videotape or broadcast a public meeting, as well as the right to make a motion picture or still camera record of such meeting (Section 54953.5(a)). A legislative body may prohibit or limit recording of a meeting, however, if the body finds that the recording cannot continue without noise, illumination, or view obstruction that constitutes, or would constitute, a disruption of the proceedings (Section 54953.6)).

Any audio or video record of an open and public meeting that is made, for whatever purpose, by or at the direction of the local agency is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act (Section 549533b)). The local agency must not destroy the audio or video record for at least 30 days following the date of the recording. Inspection of the audio or

video must be made available to the public for free on equipment provided by the local agency.

The Brown Act requires written material distributed to a majority of the body by any person to be provided to the public without delay. If the material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting (Section 54957.5). This rule is inapplicable, however, to attorney-client memoranda. The California Supreme Court affirmed the confidentiality of such documents in the case of *Roberts v. City of Palmdale*, 5 Cal. 4th 363 (1993).

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

H. Closed Sessions

The Brown Act allows a legislative body to convene a "closed session" during a meeting in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as "executive sessions," which is a holdover term from the statute's early days. Examples of business that may be conducted in closed session include personnel evaluations, threats to public safety, labor negotiations, pending litigation, real estate negotiations, to consider a response to an audit report (Sections 54956.8, 54956.9, 54957 and 54957.6). Political sensitivity of an item is not a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. And, there is a "bonus" of sorts for using prescribed language to describe closed sessions in that legal challenges to the adequacy of the description are precluded (Section 54954.5). This so-called "safe harbor" encourages many local agencies to use a very similar agenda format. Recording of closed sessions is not required unless a court orders such recording after finding a closed session violation (Section 54960).

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

After a closed session, the legislative body must reconvene the public meeting and publicly report certain types of actions if they were taken, and the vote on those

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

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

The Brown Act was recently amended to prohibit attendees from disclosing confidential information obtained during a closed session, unless the legislative body authorizes the disclosure. Violations can be addressed through injunctions, disciplinary action, and referral to the grand jury. (Section 54963).

I. Enforcement

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body, and remedies for breaching closed session confidences. (Sections 54960, 54960.1 and 54963).

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

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

J. Conclusion

The Brown Act can be confusing, and compliance with it can be difficult, due to the statutes many rules and ambiguities. In the event that you have any questions regarding any provision of the law, please consult with the FPPC for advice.

CHAPTER 5 – D.

CONFIDENTIALITY OF CLOSED SESSIONS AND ATTORNEY CLIENT PRIVILEGED COMMUNICATIONS

A. Purposes of confidentiality

The court in Roberts v. City of Palmdale, 5 Cal. 4th 363 (1993) stated the reasons for allowing public agencies to keep attorney/client privileged information confidential:

> "Open government is a constructive value in our democratic society. [citations.] The attorney-client privilege, however, also has a strong basis in public policy and the administration of justice. The attorney-client privilege has a venerable pedigree that can be traced back 400 years. The privilege seeks to insure "the right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice . . ." [citations] It is no mere peripheral evidentiary rule, but is held vital to the effective administration of justice. [citations.] The privilege promotes forthright legal advice and thus screens' out meritless litigation that could occupy the courts at the public's expense. [citations.] The privilege serves to 'encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.
>
> "A city council needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel, even though the scope of confidential meetings is limited by this state's public meeting requirements. The public interest is served by the privilege because it permits local government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary controversy with various members of the public."

B. Prohibition against disclosure of confidential communications and information

The Brown Act prohibits a person from disclosing confidential information obtained during a closed session, unless the legislative body authorizes the disclosure. Violations of this section may result in an injunction, disciplinary action, or referral to the grand jury. (Government Code Section 54963). In addition, legislative officials who violate the confidentially of closed sessions may be barred from future closed sessions. (76 Cal. Atty. Gen. 289,291 (1993)).

C. Summary

- It is inappropriate for any one Councilmember to disclose attorney/client privileged documents, information obtained from attorney/client privileged documents, or information derived from closed session discussions. The City is the holder of the attorney/client privilege and the holder of the right to keep confidential information discussed in closed sessions. Disclosure of closed session discussions should only occur when required by law or upon a majority vote of the City Council upon advice of the legal counsel or negotiator handing the matter.

- It is inappropriate for the City Council or any one City Councilmember to publicly discuss matters that influence negotiation or litigation strategy. This is because such discussions may impair the cooperation of various parties and may affect the ability or willingness of parties to reach agreement or settle litigation.

- Public discussion of non-confidential aspects of a subject for which negotiations or litigation is pending cannot be barred. Thus, if a Councilmember desires to criticize the rest of the City Council or administration regarding the handling of a subject, such criticism cannot be barred unless the content of the City Councilmember's remarks involves disclosure of confidential information.

It is advisable for each City Councilmember to adhere to the "majority rules" principle during the pendency of a lawsuit or series of negotiations at least until the matter is resolved. Thus, even if two Councilmembers disagree with the position the majority has taken, it is beneficial to the City's position to stand united on the issue. This will discourage others from seeking information about closed session discussions to "divide and conquer" the City Council on the particular issue at hand as well as about other issues that occur in the future.

CHAPTER 6.

SUMMARY OF THE MAJOR PROVISIONS AND REQUIREMENTS OF THE PRINCIPAL CONFLICT OF INTEREST LAWS

A. Laws Regulating Decision-making

1. Political Reform Act of 1974

The Political Reform Act of 1974 ("PRA") is the principal law in California governing conflicts of interest for public officials. The Fair Political Practices Commission ("FPPC") has interpreted the PRA in regulations found in California Code of Regulations Section 18110 et seq.

The PRA prohibits public officials (including Councilmembers) from making, participating in the making, or in any way attempting to use their official position to influence a decision in which they know or have reason to know they have a financial interest (Section 87100). The FPPC has promulgated an eight-step test for determining when disqualification is required.

A public official has a conflict of interest and must abstain if a decision will have a reasonably foreseeable material financial effect on certain economic interests, unless that effect is indistinguishable from the effect on the public generally. Those financial interests are:

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

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

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

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

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating three hundred sixty dollars ($470) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. . . ."

[The dollar amount in this paragraph is adjusted biannually using the California Consumer Price Index.] (Section 87103).

FPPC Regulations provide guidance for most of the terms used in the PRA as well as standards for determining if each element of the PRA's prohibitions have been satisfied. Some address standards for determining if a decision has a material financial effect on a business entity (Regulation Section 18705.1) or on various types of interests in real property (Regulation Section 18705.2). These regulations have been recently revised and a summary is provided below.

a. Decisions affecting business entities

There are a number of economic interests that may result in a conflict of interest. For example, a public official has an economic interest in any business entity in which either (i) the official has a direct or indirect investment worth $2,000 or more; or (ii) the official is a director, officer, partner, trustee, employee or holds a management position (Regulation Section 18703.1).

In order to determine whether a decision will have a material financial effect on a public official's economic interests, it is necessary to evaluate whether those interests are directly or indirectly involved in the decision. A business entity interest is deemed directly involved if it initiates, is a named party in, or is the subject of, the proceeding (Regulation Section 18704.1). The financial effect of a decision on a directly involved business entity interest is presumed to be material unless the official's only economic interest is an investment worth $25,000 or less. When the interest of a business entity is indirectly involved, the materiality of a financial effect hinges on the size of the entity and the decision's impact on the entity's gross revenue, expenses, assets and liabilities (Regulation Sections 18704.1 and 18705.1).

For large "Fortune 500" business entities, a decision will be found to materially affect the business entity if the decision will affect the gross revenues, expenses, assets or liabilities by $10,000,000 or more in a fiscal year or result in an increase or decrease in expenses by $2,500,000 or more in a fiscal year (Regulation Section 18705.1(c)(l)). Lower thresholds apply for companies that are listed or meet the criteria for listing on the New York Stock Exchange or the NASDAQ/AMEX (Regulation Section 18705.1 (c)(2) and (3)).

For small companies that are not listed on the Fortune 500, New York Stock Exchange or the NASDAQ/AMEX or do not meet the criteria for listing on the New York Stock Exchange or the NASDAQ/AMEX, the decision is regarded as materially affecting the company if the decision will result in an increase or decrease in gross revenues for a fiscal year of $20,000 or more, or increase or reduce expenses by $5,000 or more in a fiscal year, or result in an increase or decrease in the value of its assets or liabilities by $20,000 or more (Regulation Section 18705.1 (c)(4)).

Certain other standards apply if the source of income is a non-profit entity (Regulation Section 18705.3(b)(2) or an individual (Regulation Section 18705.3(b)(3).

Lastly, if the public official receives or is promised to receive income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision, then any reasonably foreseeable effect of the decision on that person (including a business entity) that is a source of income or promised source of income to the public official is deemed material (Regulation Section 18705.3(c)). This is the so-called "nexus" test and is likely to apply in situations where the public official is employed by a business entity where the job description involves accomplishing goals that would be achieved by the public official's decision.

b. Decisions affecting real property

As with business interests, whether a decision will have a material effect on a real property interest depends upon whether the real property interest is directly or indirectly involved in the decision. A real property interest is deemed directly involved if it is the subject of the decision. (Regulation Section 18704.2). The financial effect of a decision on a directly involved real property interest is presumed to be material, without regard to the effect of the decision on the value of the real property. However, the presumption may be rebutted by proof that it is not reasonably foreseeable the decision will have any financial effect on the property.

When a real property interest is indirectly involved, there are three standards for determining whether the financial effect on the official's interest is material.

First, if a decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the official's real property will receive a new or substantially improved service, the decision is regarded as having a material financial effect on the official's property.

Second, if the official's property is within 500 feet of the boundaries of the property subject to the decision, the decision is presumed to have a material financial effect on the official's property. This presumption may be rebutted, by proof that specific circumstances make it reasonably foreseeable that the decision will have no financial effect at all on the official's real property interest.

Third, if the official's real property is located outside a radius of 500 feet, the official's real property is considered to be indirectly involved and the decision is presumed to have no material financial effect on the official's property. This presumption may also be rebutted, however, by proof that specific circumstances make it reasonably foreseeable that the decision will have a material financial effect on the property. Such circumstances include situations where the decision affects: (i) the development potential or income producing potential of the official's real property; (ii) the use of the official's real property; (iii) the character of the neighborhood including, but not limited to,

substantial effects on traffic, view, privacy, intensity of use, noise levels, air emission or similar traits of the neighborhood (Regulation Section 18705.2).

If the official's interest in real property is a leasehold interest (a leasehold of more than one month or a leasehold that is more than a month-to-month lease), then a decision that does not directly affect that property would have to substantially affect the use, enjoyment or term of the lease or affect the rent by five percent (5%) during any 12-month period, before the official would have a conflict of interest. If the property to which the leasehold interest applies is directly involved in the decision, the effect on the leasehold interest is presumed to be material unless there is proof that the decision will have no financial effect on the leasehold interest, or the leasehold is a month-to-month lease or shorter. (Regulation Sections 18233, 18705.2.)

c. Decisions affecting prospective employers

On January 1, 2004, an amendment to the PRA went into effect, which prohibits all public officials from making, participating in making, or using their official positions to influence, any governmental decision directly relating to or likely to financially impact a prospective employer. Gov't Code § 87407. Accordingly, in the event a Councilmember is engaged in negotiations with a prospective employer or has a preexisting arrangement for future work for an employer, and that employer then seeks a permit or other approval from the City, the Councilmember should abstain from any participation in that decision. Where a Councilmember has rejected an offer of employment, or been rejected by an employer, abstention is not required (Regulation Section 18747).

d. The "public generally" exception

Once it is determined that it is reasonably foreseeable that a decision will have a material financial effect on a public official's economic interest, it is necessary to evaluate whether an exception to the disqualification requirement is applicable. One exception is that disqualification is not required when the official's economic interest will be affected in substantially the same manner as a significant segment of the public (Regulation Section 18707). This exception is known as the "public generally" exception and provides that even if the decision will have a reasonably foreseeable material financial effect on the official's financial interest, disqualification is required only if the effect on the public official is distinguishable from the effect on the financial interests of the public generally or a significant segment of that public. The "public generally" is comprised of the entire jurisdiction of the City (In re Legan, 9 FPPC Ops. 1 (1985)).

Pursuant to Regulation Section 18707.1, if the official's financial interest is the official's personal expenses, income, assets or liabilities, a governmental decision will affect a significant segment of the public if the decision will affect ten percent or more of the City's population or 5,000 individuals who are residents of the City. If the official's financial interest is real property, a governmental decision will affect a significant segment of the public if the decision will affect ten percent or more of the City's property owners or homeowners or 5,000 property owners or homeowners of the City. Lastly, if

the official's financial interest is a business entity, a governmental decision will affect a significant segment of the public if the decision will affect 2,000 or twenty-five percent of all businesses in the City. Certain additional rules apply if the City has a population of less than 25,000 (Regulation Section 18707.3) or if the decision affects a predominant industry, trade or profession in the City (Section 18707.7).

Another exception is that disqualification is not required when the official's participation is legally required (Regulation Section 18708). This "rule of legally required participation" addresses the situation where there is no quorum due to a conflict of interest disqualification (as opposed to a decision maker's absence or abstention), and it cannot be used to break a tie. This exception may be invoked under very limited circumstances.

e. Rules for abstention

The PRA was amended, effective January 1, 2003, to establish specific rules of procedure when a public official has a conflict of interest and is required to abstain from the decision. Immediately prior to the consideration of the matter, the official is to: (i) identify the financial interest that gives rise to the conflict in detail sufficient to be understood by the public except that disclosure of the exact street address of a residence is not required; (ii) publicly state his or her recusal from the matter; and (iii) leave the room until after the disposition of the matter unless the matter appears on a consent calendar or other similar portion of an agenda for uncontested matters. (Section 87105, Regulation Section 18702.5).

The new law allows the public official to comment on the item as a member of the public during the public comment period. However, other provisions of the conflict-of-interest laws limit the ability of a disqualified official to speak as a member of the public on the item. Specifically, the public official may speak as a member of the public solely to represent himself or herself on a matter which is related to his or her "personal interests." A "personal interest" includes an interest in real property or a business entity that is wholly owned by the official or his or her immediate family (Regulation Section 18702.4). If a public official wishes to speak on a matter related to his or her "personal interests," the official may wish to observe the comments of other speakers via video conference, so that he or she may effectively rebut anything those speakers discuss.

2. Government Code Section 1090

Government Section 1090 provides in relevant part:

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

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

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

Section 1090 is unlike the PRA (discussed in Section A above) and the common law doctrine against conflicts of interest (discussed in Section C below). Those laws obligate the public official with the conflict of interest to abstain from participation in the decision, but otherwise allow the decision to go forward. By contrast, Section 1090 prevents a city from entering into a contract in which one of its officers or employees has a financial interest unless certain exceptions apply.

Over the years, the courts have broadly interpreted the key provisions of Section 1090. For example, the California Supreme Court has ruled that the term "financially interested" includes any direct interest, such as that involved when a public official enters directly into a contract with the body of which he is a member (Thompson v. Call, 38 Cal. 3d 633 (1985)). The Court of Appeal has interpreted "financially interested" as including indirect financial interests in a contract where, for example, a public official would gain something financially by the making of the contract (Fraser- Yamor Agency, Inc. v. County of Del Norte, 68 Cal. App. 3d 201 (1977)). Additionally, the Court of Appeal has construed the term "made" as encompassing such elements in the making of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans or specifications and solicitation for bids (Milbrae Association for Residential Survival v. City of Milbrae, 262 Cal. App. 2d 222, 237 (1968); Planning Commission v. McKinley, 80 Cal. App. 3d 204, (1978)).

There are two categories of exceptions to Section 1090. The first, encompassing what are commonly referred to as "remote interests," is set forth in Section 1091. If an official has only a remote interest in a contract, then a city may enter the contract as long as the official abstains from participating in the decision. The second category of exceptions is found in Section 1091.5. These exceptions are called "non-interests" and are excluded from the scope of Section 1090.

The penalties for violating Section 1090 are severe: the contract will be deemed void (Section 1092), and the public official with the financial interest in the contract may be subject to civil and criminal penalties and may be fined and forever barred from holding public office (Section 1097).

3. Common law doctrine against conflicts of interest

The common law doctrine against conflicts of interest constitutes the courts' expression of the public policy against public officials using their official positions for their private benefit (Terry v. Bender, 143 Cal. App. 2d 198 (1956)). This doctrine provides an independent basis for requiring public officials and employees to abstain from participating in matters in which they have a financial interest. Violation of the doctrine can amount to official misconduct and can result in loss of office (Nussbaum v. Weeks, 214 Cal. App. 3d 1589 (1989)).

By virtue of holding public office, an elected official "is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." (Noble v. City of Palo Alto, 89 Cal. App. 47, 5 1 (1928)). An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of a private interest (Id.).

The common law doctrine against conflicts of interest has been primarily applied to require a public official to abstain from participation in cases where the official's private financial interest may conflict with his or her official duties (64 Ops. Cal. Atty. Gen. 795, 797 (1981)). However, the doctrine also applies when specific circumstances preclude a public official from being a disinterested, unbiased decision maker for a quasi-judicial matter. In one case, a councilmember who voted to deny permits for a condominium project was deemed to have a common law conflict of interest (e.g., bias) due to his interest in preserving his ocean view and his personal animosity toward the applicants (Clark v. City of Hermosa Beach, 48 Cal. App. 4th 1152 (1996)). However, courts are reluctant to find a common law conflict of interest except in particularly egregious circumstances (Breakzone Billiards v. City of Torrance, 81 Cal. App. 4th 1205, 1233 (2000)).

B. Laws Regulating Receipt of Gifts, Honoraria and Loans

The PRA provisions and other conflict of interest laws discussed above do not prohibit a public official from having an interest in a business or real property. Instead, they merely limit the official's ability to participate in a decision that would materially affect those interests.

There are additional restrictions in the PRA, however, with regard to certain gifts, honoraria and loans. The statute precludes local officials (including City Councilmembers and planning commissioners) from receiving certain gifts, honoraria and loans. These prohibitions apply whether or not the source of the gift, honorarium or loan is, or will ever be, affected by a decision of the official's agency. This section outlines these prohibitions.

1. **Limitations on receipt of gifts**

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

   "No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than $250.00 601." (Emphasis added).

(Section 89503(a); Regulation Section 18703.4.) Officials listed in Section 87200, in turn, include mayors, city Councilmembers, planning commissioners, city managers, city attorneys, city treasurers, and candidates for any of these offices.

A similar limitation prohibits a City employee designated in a local conflict of interest code from accepting gifts from a single source totaling more than $590 in value in any calendar year if the gifts would be required to be reported on his or her statement of economic interests (Section 89503(c); Regulation Section 18703.4).

   b. **Biennial Gift Limit Adjustment** - The Political Reform Act authorizes the FPPC to make an inflationary adjustment of the limitations set forth in Section 89503 every two years (Section 89503(f)). The most recent adjustment became effective on January 1, 2023, raising the gift limitation from $470 to $590. This figure will be further adjusted in future odd-numbered years.

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

      i. ***Basic Exceptions*** - None of the following is a gift and none is subject to any limitation on gifts (Regulation Section 18942):

      ii. ***Informational Materials*** - such as books, calendars, videos, and free or discounted admission to educational conferences that are provided to assist the official in the performance of official duties.

      iii. ***Returned Gifts*** - A gift that is not used and that, within 30 days after receipt, is returned or donated pursuant to Regulation Section 18943, or for which reimbursement is paid pursuant to Regulation Section 18943.

      iv. ***Family Gifts*** - A gift from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person, unless the donor is acting as an agent or intermediary for any other person.

v. ***Campaign Contributions*** - Please note, however, campaign contributions are required to be reported.

vi. ***Inherited Money or Property*** - Any devise or inheritance.

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

viii. ***Home Hospitality*** - Hospitality (including food, beverages, or occasional lodging) provided to an official by an individual in his or her home when the individual or a member of the individual's family is present.

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

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

xi. ***Campaign Travel*** - The transportation, lodging, and subsistence provided in direct connection with campaign activities, including attendance at political fundraisers.

d. Gifts to Your Family - Regulation Section 18944 provides (in summary):

i. Gifts given directly to members of an official's immediate family are not gifts to the official unless used or disposed of by the official or given by the recipient member of the official's immediate family to the official for disposition or use at the official's discretion.

ii. Gifts delivered by mail or other written communication are given directly to members of the official's immediate family if the family members' names or familial designations (such as "spouse") appear in the address on the envelope or in the communication

tendering or offering the gift, and the gift is intended for their use or enjoyment.

iii. A gift given to the official, but designated for the official and spouse or family, is a gift to the official if the official exercises discretion and control over who will actually use the gift.

iv. If the official enjoys direct benefit from a single gift, as well as members of the official's family, the full value of the gift is attributable to the official.

e. Tickets to Political and Charitable Fundraisers - Regulation Section 1 8946.4 provides (in summary):

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

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

(2) If the ticket has no stated price or no stated donation portion, the value of the gift is the fair market value of any food, beverage, or other tangible benefits provided to each attendee.

ii. ***Fundraiser for a religious, charitable, scientific, literary or educational organization*** - Where the event is a fundraising event for an organization exempt from taxation under Internal Revenue Code Section 501(c)(3), the ticket or other admission privilege has no value.

iii. ***Political Fundraiser*** - Where the event is a fund-raising event for a campaign committee or candidate, the ticket or other admission privilege has no value.

f. Prizes and Awards from Competitions - Regulation Section 1 8946.5 provides (in summary):

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

g. Certain Gifts of Travel Exempt from Gift Limitations

i. Travel In Connection With Speeches, Panels, and Seminars.

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

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

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

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

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

(2) The payment is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, defined in Revenue and Taxation Code Section 203, or by a nonprofit charitable or religious organization that is exempt from taxation under Internal Revenue Code Section 501(c)(3), or by a person that is domiciled outside the United States and that substantially satisfies the requirements for tax exempt status under Internal Revenue Code Section 50 1 (c)(3).

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

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

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

2. Prohibitions on receipt of honoraria

a. Basic Prohibition - Section 89502 provides that no elected officer of a local government agency nor any official listed in Section 87200 shall accept an honorarium.

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

c. Summary of Exceptions to Prohibition on Honoraria

i. ***Earned Income Exception*** - "Honorarium" does not include income earned for personal services if:

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

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

ii. ***Information Materials*** - "Honorarium" does not include information materials such as books, calendars, videos, or free or discounted admission to educational conferences that are provided to assist the official in the performance of official duties.

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

iv. ***Campaign contributions*** - However, campaign contributions are required to be reported.

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

vi. ***Admission and Incidentals at Place of Speech*** - "Honorarium" does not include free admission, refreshments and similar non-cash nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity.

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

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

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

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

3. Prohibitions on receipt of certain types of loans

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

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

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

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

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

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

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

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

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

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

(1) The date the loan was made;

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

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

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

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

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

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

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

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

C. Other Specialized Conflict of Interest Laws

1. Incompatible Outside Activities (Government Code Section 1126 et seq,) -

California Government Code Section 1126 provides:

"(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, actions, or responsibilities of his or her appointing power or the agency by which he or she is employed. . . ."

The provisions of Section 1126 prohibit officials and employees of a local government agency from engaging in outside employment or activities where any part of the employment or activity will be subject to approval by any other officer, employee, board or commission of the local agency. Exceptions are created to permit a public official to engage in outside employment by a private business (Section 1127), and to permit an attorney employed by a local agency in a non-elective position to serve on an appointed or elected governmental board of another agency (Section 1128).

However, the court in Mazzola v. City and County of San Francisco, 112 Cal. App. 3d 141 (1980) ruled that Section 1126 provides only authorization to implement standards for incompatibility pursuant to paragraph (b) of Section 1126. The court ruled that the restrictions of Section 1126 are not self-executing because existing and future employees should have notice that specific outside activities are or are not compatible with their duties as an officer or employee of the local agency. Thus, Section 1126 would not bar a public official from holding a position outside their public agency unless the public agency in which they serve as a public official adopts an ordinance in compliance with the requirements of Section 1126 that specifies that the two positions or activities are incompatible.

In light of the court's decision in Mazzola, the Attorney General ruled that Section 1126 did not apply to any elected official, such as a City councilmember, since elected officials do not have an "appointing power" that can promulgate guidelines for their activities pursuant to Section 1126. However, if a local agency adopts such guidelines, they can be made applicable to officers and employees subordinate to the legislative body of the local agency, including members of advisory boards and commissions.

2. Common Law Doctrine Against Incompatible Offices

The common law doctrine against incompatibility of offices arose from a concern that the public interest would suffer where one person holds two public offices which might possibly come into conflict. The California Supreme Court set forth the following test for incompatibility of office in People ex rel. Chapman v. Rapsey, 16 Cal. 2d 636 (1940):

> "Two offices are said to be incompatible when the holder cannot in every instance discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both." (16 Cal. 2d at 641-642).

Incompatibility of offices is not measured only by conflicts which do exist, but also by those conflicts which might arise (People ex rel. Chapman, 16 Cal. 2d 636, 641-642 (1940); 66 Ops. Cal. Atty. Gen. 382, 384 (1983); 64 Ops. Cal. Atty. Gen. 288,289 (1981)).

In order to determine whether two positions are in conflict, it is necessary to determine first whether the positions are public offices. No statutory definition is given to the term "public officer." However, in People ex rel. Chapman v. Rapsey, supra, the court stated:

> "[A] public office is said to be the right, authority, and duty, created and conferred by law-the tenure of which is not transient, occasional, or incidental-by which for a given period an individual is invested with power to perform a public function for public benefit . . .
>
> One of the prime requisites is that the office be created by the Constitution or authorized by some statute. And it is essential that the incumbent be clothed with a part of the sovereignty of the state to be exercised in the interest of the public." (citation) (16 Cal. 2d at 640).

Incompatibility can be triggered if the duties of the two offices "overlap so that their exercise may require contradictory or inconsistent action, to the detriment of the public interest." (People ex. rel. Bagshaw v. Thomson, 55 Cal. App. 2d 147, 150 (1942)). Only one significant clash of duties and loyalties is required to make offices incompatible (37 Ops. Cal. Atty. Gen. 21,22 (1961). The policy set forth in People ex rel.

Chapman v. Rapsey includes prospective as well as present clashes of duties and loyalties (63 Ops. Cal. Atty. Gen. 623 (1980)).

Disqualification of oneself from participating in those situations of potential conflict has not been authorized as a remedy for incompatible offices. The general rule provides:

> "The existence of devices to avoid . . . [conflicts] neither changes the nature of the potential conflicts nor provides assurances that they would be employed (38 Ops. Cal. Atty. Gen. 121, 125 (1961)). Accordingly, the ability to abstain when a conflict arises will not excuse the incompatibility or obviate the effects of the doctrine." (66 Ops. Cal. Atty. Gen. 176, 177 (1983)).

The effect of the doctrine of incompatibility of offices is that a public official who enters upon the duties of a second office must vacate the first office if the two are incompatible (People ex rel Chapman v. Rapsey, 16 Cal. 2d 636,644 (1940)).

3. Discount Passes on Common Carriers (California Constitution, Article XII, Section 7)

Article XII, Section 7 of the California Constitution states:

> "A transportation company may not grant free passes or discounts to anyone holding in office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission."

The Attorney General has explained this provision applies in the following manner:

a. The prohibition applies to public officers, both elected and non-elected, but not employees.

b. The prohibition applies to interstate and foreign carriers as well as domestic carriers, and to transportation received outside California.

c. The prohibition applies irrespective of whether the pass or discount was provided in connection with personal or public business.

d. Violation of the prohibition is punishable by forfeiture of office.

There have only been a few decisions that address this Constitutional prohibition. In one Opinion, the Attorney General granted leave to sue two members of a city council who accepted free airline tickets to London given by Laker Airlines as part of the airline's promotion of its new Los Angeles to London service. Despite the fact that the Councilmembers were unaware of the prohibition, the Attorney General allowed a quo warranto suit that subsequently settled before judgment (cited in 76 Ops. Cal. Atty. Gen. 1,3 (1993)).

In another Opinion, the mayor of a city received an upgrade from a coach seat to a first-class seat on Hawaiian Airlines (76 Ops. Cal. Atty. Gen. 1 (1993)). There, the mayor's ticket was one of 20 first-class upgraded tickets that the airline was allowed to provide to "high profile, prominent members of the community." At issue was whether that situation fit within an exception to the Constitutional prohibition for situations when the free transportation or discount is provided to a public officer as a member of a larger group unrelated to the official's position. The Attorney General ruled that the facts did not satisfy the exception and that a violation of the prohibition had occurred.

The exception considered in that Opinion stemmed out of a 1984 Opinion of the Attorney General which held that a public officer could accept first-class ticket upgrades by virtue of the airline's policy to do so for all persons on their honeymoon. In 67 Ops. Cal. Atty. Gen. 81 (1984), the Attorney General concluded that a public officer, whose spouse was a flight attendant, could accept a free transportation pass or discount when such was offered to all spouses of flight attendants without distinction to the official status of the recipient.

Consequently, if the pass or discount is provided to the official because of his or her position as a governmental official, the prohibition applies. If it is provided to the official as a member of a larger group that is not related to the functions of his or her office, the prohibition may not be applicable.

D. Conclusion

More often than not, determining the application of conflict-of-interest laws in particular circumstances requires complicated analysis. Because the consequences for a violation of these laws can be very serious, it is important that potential conflicts be identified as soon as possible to ensure that the appropriate analysis can be performed. To that end, we have instructed staff to prepare 500 feet radius maps so that Councilmembers may be alerted to projects that are located within 500 feet of a councilmember's residence. Keep in mind, however, that it is your responsibility to determine whether you may have a conflict.

We encourage you to seek advice from the FPPC whenever you are in doubt about a conflict-of-interest issue. In that only a formal, written opinion from the FPPC can immunize you from prosecution, we strongly encourage you to seek such advice as early as possible, so that, if necessary, the City may request a formal opinion from the FPPC prior to your participation in any decision where you may have a conflict.

CHAPTER 7.

PUBLIC RECORDS

Councilmembers should be aware that most documents generated in the City constitute public records which must be disclosed upon request. The Public Records Act contains the majority of regulations governing public records. Section 6252 of the Government Code defines "public records" as:

> "Any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

Within this definition, "writing" is also defined very broadly. Section 6252 defines "writing" as, essentially, any "means of recording upon any form of communication or representation." Therefore, maps, tapes, photographs, magnetic or punched cards, and computer hard drives and diskettes, are all considered "writings" within the scope of the Public Records Act.

The guiding provision of the Act is contained in Section 6253 which provides that:

> "Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section."

In essence, this Section provides that any public record which is not specifically exempted by statute must be made available to the public. The Act contains a long list of public records that are exempt from disclosure requirements and may be withheld from the public. The determination of whether a document is exempt from disclosure is usually made by staff, with the advice of the City Attorney.

A detailed discussion of the Public Records Act is beyond the scope of this Manual. We mention the Act only so that Councilmembers and Commission members are aware that most City Council and Commission correspondence constitute public records which must be disclosed upon request. The inclusion of the words "private" or "confidential" on the documents do not make otherwise public documents exempt from disclosure under the Act. Councilmembers and Commission members should keep this in mind in their correspondence and other documents relating to City business.

CHAPTER 8.

CITY COMMISSIONS

A. CITY COMMISSIONS, BOARDS AND COMMITTEES

Description of Commissions

The City Council has established three commissions to advise them on issues before the City. The commissions also serve as a resource to the community, as many matters may be handled or reviewed by commissions before progressing to the City Council for a decision or appeal. Only the existence of a Planning Commission is legislated by State law; the other commissions exist as a result of City Council action.

Staff Responsibilities

City staff provides administrative support and information to commissions in order that commissions can fulfill their responsibilities as legislated in the Municipal Code. Staff does not report to commissions and commissions do not oversee departmental operations.

It is the City's practice for a Commission member to attend the next available City Council meeting to report on the commission's business to the City Council.

Planning Commission

- 5 members.
- The only commission legislated by State law which establishes the areas over which the Planning Commission has authority, either as a decision-making body or advisory to the City Council.
- Staff support provided by the Planning Department.
- Recommends broad development policies to the City Council.
- Reviews capital projects for their conformance to the General Plan.
- Acts as an advisory body to the City Council on applications for changes to zoning regulations and the General Plan and, absent an appeal to the City Council, is the final authority over a variety of discretionary development applications (Subdivision applications, Conditional Use Permits, Development Plan Review Permits, etc.), variances from the zoning regulations (sitting as the Board of Zoning Appeals) and for the environmental assessment of such applications, s prescribed by law.
- Acts as review panel for State and federally mandated programs.
- Red Bluff Municipal Code Chapter 2 Administration Article V: Planning Commission.

Recreation and Parks Commission

- 5 members.
- Staff support provided by Parks and Recreation Department.
- Advises and makes recommendations on the planning, evaluation and delivery of recreation and parks programs and facilities.
- Formulates general policies on use and delivery of recreation and park services.
- Evaluates the effectiveness of programs in relation to City Council policy objectives.
- Conducts public outreach within the community concerning recreation and parks programs.
- Advises the City Council regarding capital improvements and recreation and parks program projects.
- Recommends proposed user fees for use of recreation and parks facilities and programs.
- Red Bluff Municipal Code Chapter 2 Administration Article IV: Parks and Recreation Commission and Department.

Airport Commission

- 5 members
- Staff support provided by the Public Works Department.
- Advises and makes recommendations on the Red Bluff Airport.
- Red Bluff Municipal Code Chapter 3A: Airport.

CHAPTER 8-A.

APPOINTMENT OF CITY COMMISSIONERS

I. Purpose

The process for appointing City commissioners is an unbiased process that results in the most qualified applicants being appointed to fill commission vacancies. This policy reflects the City Council's position on the process for recruiting, selecting and appointing commissioners.

II. Scope

Council shall create such commissions as required by state law or as deemed appropriate for the performance of specific City functions. Commissions shall be created by ordinance. Every commission shall continue indefinitely until abolished by council.

III. Definitions

For the purpose of this policy:

Scheduled Vacancies: A vacancy on a commission that has occurred due to the expiration of a commissioner's term.

Unscheduled Vacancies: A vacancy on a commission that has occurred for any reason other than by expiration of a commissioner's term, such as when any member dies, resigns or is removed.

Commission: An agency charged with the consideration of an indefinitely recurrent sequence of transactions and whose members serve for a specified term and hold meetings on a regular publicized schedule.

IV. Policy

A. SCHEDULED VACANCIES

The procedure for filling scheduled vacancies is as follows:

- Announce vacancy in October of each year - **1 month application period** begins.
- Publish vacancy notice in local paper and on City Website.

- To preserve the integrity of the application and interview process, applicants must direct all inquiries to the Deputy City Clerk, City Manager or the Department Director. Applicants are prohibited from making contact with the Councilmembers, or members of the Commission on which the vacancy exists, to lobby for appointment.

B. APPOINTMENT PROCESS

- Deputy City Clerk receives applications. All applications received by the closing date are presented to the City Council.
- The Deputy City Clerk then notifies applicants to attend the first City Council meeting in December, at which time the City Council may ask any questions that they may have of the applicants.
- All Candidates will be mailed a copy of the City Council agenda, corresponding staff report and a memo the Friday prior to making the appointment.
- All Candidates will be sent letters the next day following City Council appointments.
- All applicants are strongly encouraged to attend commission meetings prior to the interviews.
- Newly-appointed commissioner attends commission meeting to observe prior to effective date of term.

C. ELIGIBILITY REQUIREMENTS

- Currently there are no eligibility requirements for the Planning, Airport and/or Parks and Recreation Commissions.

D. COMMISSION TERMS

The following terms apply to each commissioner appointed:

- Initial term of three years.
- At the discretion of the City Council, commissioners may be reappointed to additional three (3) year terms.
- The City Council may appoint any commission member or members to terms shorter or longer than those set forth in this subsection if the City Council determines that a shorter or longer term or terms are appropriate to stagger the terms of appointees so that the terms of all or a majority of members do not expire concurrently or inappropriately close in time.
- The Deputy City Clerk requests a confirmation letter from commissioners eligible for reappointment one month in advance.
- Appointments to Commissions shall take place at the first City Council meeting in December of each year.

E. CRITERIA FOR INTERVIEW PANEL AND VOTE

The following is the policy for the official City Council vote on the recommendation of candidates for commission positions:

- No requirement for Councilmember recusal from vote.
- Commission appointment is placed on the City Council formal agenda.
- Councilmembers vote on all applicants who have applied for consideration.

F. NEWLY APPOINTED COMMISSIONERS

Each candidate will be notified of their appointment requiring them to schedule an appointment with the Deputy City Clerk to be sworn in. A Form 700 (Statement of Economic Interests) is due for filing within 30 days of assuming office. A listing of all commissioners will be updated and distributed.

H. TERMINATION OF COMMISSION MEMBERSHIP

- Membership shall terminate automatically upon resignation or death of a member.
- A member may be removed from the Commission by a majority vote of the City Council. A member is disqualified and automatically removed from office if he or she is absent from two consecutive meetings of the Commission without the prior consent of the Chair of the Commission. The City Council, at its discretion, may rescind the automatic removal provided herein and reappoint the subject member to the Commission.
- Membership shall terminate automatically if a member ceases to reside in the City of those boards and/or committees that require residency.
- A Form 700 (Statement of Economic Interests) is due for filing within 30 days of a commissioner leaving office.

CHAPTER 9.

USE OF CITY STATIONERY AND CITY SEAL

I. Purpose

Written communication from City officials on City stationery is public record and subject to associated laws. As such, this policy reflects the City Council's position relative to the use of City stationery and the City seal for personal correspondence.

II. Scope

State law (2 Cal. Code of Regs. §18901) dictates the parameters by which an elected official's name may be included in mass mailings from the City to the public at public expense. This policy, in contrast, specifically addresses an elected official's personal communication to the public using City letterhead, envelopes, and shield or seal when the cost of printing and sending the communication including the cost of the stationery is paid by the elected official.

This policy applies to individual mailings and mass mailings of personal correspondence.

III. Definitions

For the purpose of this policy,

Elected Official: A member of the City Council, City Clerk or the City Treasurer.

City Stationary: Refers to City letterhead and City envelopes. City letterhead is defined as City paper with the imprinted name and/or address of the City or elected official. City envelopes are envelopes imprinted with the City's return address.

City Seal: Historic City seal that is regularly used to officially identify the City of Red Bluff to the public.

Personal Correspondence: Letters and other written forms of communication that reflect the personal opinion(s) of the writer and are not being sent as official City correspondence for City business.

IV. Policy

1. Elected officials may use City stationery for City business to communicate official City policies or actions, including letters to other local, state and federal officials regarding legislative and policy matters in either their capacity as an individual Councilmember or on behalf of the City Council as a whole as authorized by the City Council.

2. The City stationery may also be used to respond to inquiries or communicate individual opinions. When correspondence is not authorized by the Council and is used to express an individual opinion, the elected official should be clear about whose view is being presented and shall include a statement in the following form: "This letter expresses only my individual views and does not reflect the views of the City Council of the City of Red Bluff."

3. Elected officials must avoid any action that could be construed as, or create the appearance of, using public office for personal gain, including use of City stationery or other City resources to obtain or promote personal business.

4. All City stationery used by elected officials for personal correspondence must clearly and plainly state that the mailing is paid at private expense and no public funds were expended for the mailing. The statement should be reviewed and approved by the City Attorney prior to including it on all such envelopes and/or letterhead. The elected officials will be responsible for paying postage for all their personal correspondences.

CHAPTER 10.

CITY RESPONSES TO STATE AND FEDERAL LEGISLATIVE ACTIONS

I. Purpose:

To set forth the policy and guidelines for the City Council and staff to communicate the City's position on legislative matters affecting the City and being addressed by State and Federal officials and neighboring jurisdictions.

II. Definition:

For the purpose of this Council Manual, legislative matters include: Federal, State and Local neighboring jurisdictions, ballot measures, initiatives and referendums for an election, political topics, and legislation being considered by a political body or organization, and social action measures.

III. Responsibilities:

A. The City Council is responsible for determining the City's position on legislative matters being addressed at the State and Federal levels and on matters being addressed by neighboring jurisdictions that impact the City of Red Bluff.

B. At the direction of the City Council, the City Manager or his designee responds to legislative matters that affect the City and/or prepare responses for the City Council's review and the Mayor's signature.

IV. Scope:

The United States government, State of California and neighboring cities to Red Bluff may, from time to time, discuss, propose and legislate on matters that positively or negatively impact local jurisdictions. To proactively respond to such actions, the Red Bluff City Council has a defined protocol for taking positions and developing responses.

V. Policies:

A. It is the policy of the City Council that positions on legislative matters may be taken when the topic, issue or initiative directly affects the health, welfare, safety and finances of the City and its residents, visitors and employees. It is not the policy of the City to take positions on issues or legislation that is not within the authority and duty of the City as a California Municipal Corporation.

B. On topics that affect and specifically reduce the City's control over local autonomy (specifically including but not limited to, zoning and local revenue

sources), the City Council authorizes the City Manager to correspond with the external legislative bodies. Copies of correspondence will be shared with the City Council.

C. Annually, City staff will present to the City Council topics and initiatives to be addressed by the League of California Cities during the legislative session (as identified by the League of California Cities work plan). The City Council will advise staff of its position on each subject, if any, in order that staff can communicate with the League of California Cities and other legislative bodies on those topics and initiatives, as necessary, throughout the year.

D. On all other topics, staff, Commissions and other parties or individuals must obtain City Council authorization to develop and transmit a City position on a legislative matter. City Council authorization must be obtained from a majority of the City Council through action at a City Council meeting.

a) City Council action will be based on a presentation of the pros and cons of the topic and where appropriate, from representatives of both positions.

b) Where practical, staffs correspondence conveying the City's position will be provided to the City Council at a City Council meeting for their approval, prior to being transmitted.

c) Correspondence on legislative matters will be drafted for the Mayor's signature on behalf of the City Council unless otherwise specified by the City Council.

d) Copies of correspondence conveying the City's position on legislative matters will be copied to the City Council.

E. In urgency situations where the City must convey a position on a legislative matter and the topic cannot be addressed through the policies stated herein, the Mayor may direct the City Manager to communicate a City position. In such situations, the City Manager will advise the City Council. The Mayor and City Manager will also report the action and position taken on the legislative matter to the City Council for review, discussion and ratification at the next City Council meeting.

The Council may also adopt a board policy based legislative platform, its City Manager may take a policy position on a matter that cannot be addressed through direct Council action if such position is consistent with the City's platform.

APPENDIX A

THE RALPH M. BROWN ACT
GOVERNMENT CODE SECTION 54950-54963
Updated with changes effective January 1, 2023

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5.