COMMISSION

AND

COMMITTEE HANDBOOK

Updated 10/1/2020
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WELCOME

Thank you for your willingness to serve as a member of a City of Irvine commission or committee. Advisory bodies play an important role in City governance and serve as a primary conduit between citizens, City staff and departments, and the City Council.

As a member, you will serve in an advisory capacity to the City Council, performing a valuable service by addressing community needs. The Mayor and City Council members look forward to your contributions as we work together providing efficient municipal services that are responsive to local needs and expectations.

This handbook is designed to provide the basic protocols that apply generally to all long-standing City commissions and committees, such as the open meeting laws commonly known as the "Brown Act." Orientation is an active process and includes initial meetings with a staff liaison who will provide you with general knowledge and understanding of public affairs. Your staff liaison will also assist you in identifying the scope and parameters of your duties and responsibilities, brief you on current business items, and provide you with foundational documentation to help you quickly adapt to your new role. Learning your role and developing an effective voice takes time and familiarity. We hope this handbook will assist you towards a satisfying and productive experience.

Your willingness to participate and offer professional expertise is deeply appreciated by the City Council, City department staff, and your community. The vitality and strength of our community is found in people like you who are willing to serve.

For more information about the City of Irvine and the numerous programs, events and services it offers, please visit the web site at cityofirvine.org.

Molly McLaughlin, MPA, CMC
City Clerk

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The Mission of the Employees of the City of Irvine is to create and maintain a community where people can live, work and play in an environment that is safe, vibrant and aesthetically pleasing.

The City of Irvine’s five values reflect the interests and needs of the community, and the level of service they expect and deserve.

Our five values are:

**INNOVATION**

We encourage new ideas to meet the needs of our community in a creative, progressive manner.

**INTEGRITY**

We are guided by high standards of moral and ethical principles in all that we do.

**PROFESSIONALISM**

We strive to be the best through excellence, leadership and training.

**FLEXIBILITY**

We appreciate the diversity of opinion resulting from a participatory government, and strive to be versatile in our dynamic organization.

**RESPONSIVENESS**

We believe in responding with mutual respect and sensitivity to the needs of the people we serve and to our fellow employees.

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**OUR COMMITMENT**

To provide quality municipal services.

**OUR BELIEF**

Cooperation and teamwork will help us achieve our mission.
**About the City of Irvine**

The City of Irvine was incorporated on December 28, 1971 under the general laws of the State of California. In 1975, the City became a charter city, deriving its authority from the California Constitution, subject to limitations established by the City Charter and by the California Legislature as to matters of statewide concern. The City operates under a City Council/City Manager form of government. The City Manager is appointed by the City Council to function as the chief administrator of the City. The City Council sets the policy directions for the City, and the City Manager is charged with implementing those directions. Additionally, the City Manager keeps the City Council informed of City operations, prepares the annual budget, oversees special programs, and coordinates the various department activities.

The City of Irvine is one of the nation's largest planned urban communities and encompasses more than 66 square miles. The City includes three independent districts: library, educational and utility services. Fire and medical services are contracted with the County of Orange.

Other government services include:

- Animal control and sheltering
- Building and safety regulation and inspection
- General administrative services
- Planning and zoning
- Police
- Public facility/capital improvement construction
- Recreation and cultural programs
- Refuse collection and recycling
- Street lighting
- Street maintenance
- Landscape maintenance
- Transportation management

**Strategic Business Plan**

As a blueprint for the City's future, the Strategic Business Plan defines the Irvine City Council's goals and evaluates the City's financial capacity to achieve them. Each year, the City Council reviews the Strategic Business Plan and sets funding priorities for the upcoming fiscal year using the financial projections contained within the Plan. When funds are not available to fulfill every goal, priority services are funded first.

The City Council's priorities include:

- A clean and well-maintained environment
- A safe community
- Economic prosperity and a livable community
- Effective government
The City’s Budget and Strategic Business Plan are excellent resources to familiarize you with the City’s financial planning, strategic goals, objectives, and long-term vision. Both documents are available on the City web site at cityofirvine.org, through your staff liaison, or by contacting the City Clerk’s Office at (949) 724-6205.
1.1 Purpose of Commissions and Committees

Commissions and committees play an important role in City government by assisting and advising the City Council in formulating and implementing policies. Commissions and committees also develop recommendations and present supporting information to the City Council to assist the elected policy-making body of the City in its decision-making. Certain advisory bodies, such as the Planning Commission, have the authority to make final decisions in some cases, which include certain land use permit or entitlement-related decisions; however, those decisions may also be appealed to the City Council for final consideration. Other matters that are considered by the Planning Commission, such as General Plan Amendments, require the City Council’s final determination.

The formation of commissions and committees is governed by Article VIII of the City Charter and Sections 1-4-101 through 1-4-304 of the Municipal Code. The City Council establishes commissions and committees by resolution or ordinance. Commissions and committees also have the power to appoint subcommittees consisting solely of their own members to perform specified tasks within their respective general areas of concern. Committees and task forces are generally established by resolution or minute order. A task force is generally given a defined period of time to accomplish their tasks and then dissolved.

The City of Irvine has numerous commissions and committees, each with distinct responsibilities. As a new member, you should familiarize yourself with the documents governing your particular advisory body, which may include City ordinances, resolutions, bylaws, relevant element(s) of the General Plan, the City Budget, and recent staff reports. These documents are available through your staff liaison or by contacting the City Clerk’s office at (949) 724-6205.

Existing commissions and committees include:

**Commissions:**
- Community Services Commission
- Finance Commission
- Planning Commission
- Senior Citizens Council
- Transportation Commission

**Committees:**
- Green Ribbon Environmental Committee
- Investment Advisory Committee
- Irvine Child Care Committee
- Irvine Children, Youth, and Families Advisory Committee
- Irvine Residents with Disabilities Advisory Board
1.2 How Appointments Are Made

Unless otherwise specified in respective Commission/Committee bylaws or City Council Action, each City Councilmember has the authority to appoint one representative to each commission and committee.

In addition, any citizen interested in serving on a commission or committee that includes at-large appointees (those not appointed as a representative by a City Councilmember) are invited to complete an application form and submit it to the City Clerk’s Office. Applications remain on file for one year. When an unscheduled vacancy occurs, applications of persons interested in serving on the particular body are accepted, and those on file are reviewed. All applications on file and received as a result of the vacancy are forwarded to the respective elected official for consideration. For the record, appointments are formalized in writing and filed with the City Clerk.

1.3 Eligibility Requirements/Qualifications

Unless otherwise specified, any person, whether or not a resident of the City of Irvine, is eligible to serve on a committee; however, members of commissions must be residents of the City of Irvine (unless the unanimous approval of the City Council is obtained) and eligible to register to vote in municipal elections. Any person appointed by a Councilmember to serve on a commission or committee is a voting member thereof.

1.4 Term of Office

Any commission or committee member appointed by a Councilmember serves at the will of that Councilmember for a term expiring upon the expiration of the Councilmember’s term. Terms of office for at-large appointees are typically two-years, but may vary by committee. A commission or committee member may also resign from office for various reasons or be replaced by their appointing Councilmember prior to the expiration of his or her term.

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1 Sunset by City Council on 2/4/09 until its review of Public Facilities CIP List
The term of office for members of a task force is generally for the life of the task force and/or when assigned tasks have been completed to the satisfaction of the City Council.

1.5 Authorizing Documents
The City Council approves the formation, composition, and responsibilities of all advisory bodies. Some advisory bodies, such as the Planning Commission, have responsibilities under State law. All advisory bodies operate under City Council auspices and are responsible to the City Council for compliance with their respective bylaws, the City Charter, City Council policies, the Municipal Code, the Zoning Code, the Brown Act (Open Meeting Law), and the City of Irvine Sunshine Ordinance (if applicable), among other regulations.

1.6 Bylaws
Generally, commission and committee operations, procedures, and duties are established in adopted bylaws. Bylaws are reviewed by the City Attorney and require formal approval by the City Council. Bylaws or policies for each commission and committee whose members include public appointees are provided in the Appendices I-V.

1.7 Meeting Times
City commissions and committees meet on a regular basis, usually monthly or bi-monthly. Meetings are open to the public. The calling of a special meeting, or the cancellation of any regular meeting, must be coordinated between the Chairperson and staff, and shall be subject to notice under the Brown Act and the City of Irvine Sunshine Ordinance (if applicable). Commission and committee members must also be notified in advance of the canceling or scheduling of meetings. Refer to Chapter Three for information regarding noticing requirements and meeting protocol.

1.8 Meetings
A majority of the members of a commission or committee constitutes a quorum, unless otherwise stated in the bylaws. No business may be transacted without a quorum. A member who is unable to attend a meeting is responsible for notifying the Chairperson or staff at the earliest possible time.

1.9 Chairperson and Vice Chairperson Election
Generally, each commission and committee selects a Chairperson and Vice Chairperson annually, according to the respective bylaws. In some cases, a Chair Pro Tem is also selected.
1.10 Attendance

For advisory bodies to function effectively and accomplish their goals, all members must be active participants, and are encouraged to attend all meetings. Any member who is absent more than the number of excused or unexcused absences allowed by the applicable bylaws shall forfeit commission or committee membership.

Municipal Code Section 1-4-208(b) states:

*It shall be the duty of each commissioner to take an active part in the commission's deliberation and to act in whatever capacity the commissioner may be called. Absence from three consecutive meetings without the formal consent of the commission shall be deemed to constitute the retirement of the commissioner, and the position shall automatically become vacant.*

1.11 Compensation and Expenses:

Members of long-standing City Commissions are entitled to a monthly stipend that is authorized by City Council resolution. Members of short-term committees and task forces formed to address a particular project or specific area of concern do not receive a stipend.

**Planning Commission:** $300 per calendar month (paid quarterly) and may be allowed reasonable travel and/or other expenses actually incurred while traveling or engaged in business by the Commission (Resolution No. 17-16).

**Community Services Commission** $225 per calendar month (paid quarterly) and may be allowed reasonable travel and/or other expenses actually incurred while traveling or engaged in business by the Commission (Resolution No. 17-16).

**Finance Commission** $225 per calendar month (paid quarterly) and may be allowed reasonable travel and/or other expenses actually incurred while traveling or engaged in business by the Commission (Resolution No. 17-16).
Transportation Commission  $225 per calendar month (paid quarterly) and may be allowed reasonable travel and/or other expenses actually incurred while traveling or engaged in business by the Commission (Resolution No. 17-16).

Senior Citizens Council  $112.50 per calendar month (paid quarterly) (Resolution No. 17-16).

1.12 Technology

The City continues to use technology as a mechanism to provide enhanced service delivery using efficient applications to accomplish economic efficiencies in the delivery of basic services. In 2019, City Commissions will be provided an iPad for the purpose of receiving electronic agendas as well as MS Office applications. This will enable Commissioners to receive information quickly and efficiently while simultaneously reducing paper and labor costs associated with agenda packet publication and distribution.
Chapter Two – Commission/Committee Role and Relationships

2.1 Council–Commission/Committee Relationship

The primary purpose of all advisory bodies is to provide judicious advice to the City Council. The role of a commission/committee can include hearing public testimony on the City Council’s behalf, building community consensus for proposals or projects, reviewing written materials, facilitating study of critical issues, guiding the implementation of new or regulating established programs, assessing the alternatives regarding issues of community concern, and ultimately forwarding recommendations to the City Council for consideration. There are times when a commission/committee recommendation will not be sustained or will be modified by the City Council. It is important not to recognize this as a rejection of the integrity of the recommendation, but rather, as an inevitable part of the process of community decision-making.

Throughout this process, the form and formality of the relationship between commission/committee members and Councilmembers will vary. Some commission/committee members will have regular contact with individual Councilmembers as well as the appointing Councilmember, while others may serve solely in the group context. There are times when the Chairperson may address the City Council formally on behalf of the commission/committee, and other times when a commission/committee member may meet with a Councilmember individually. It is important to aim for clarity and mutual respect for the different responsibilities and roles at all times.

2.2 Staff Responsibilities

Important staff responsibilities include:

- Being informed about the latest developments in their field.
- Providing background and internal perspective to the commission/committee on important issues.
- Providing administrative support, including agenda and report preparation and recording of minutes at meetings.
- Assisting the commission/committee to move through meeting agenda items to ensure Commission business is advanced.
- Interpreting relevant City, State, and Federal laws and policies.
- Alerting commission/committee members of concerns related to Commission business.
- Presenting commission/committee recommendations to the City Council.
2.3 City Clerk

The City Clerk’s Office accepts and maintains commission/committee applications, updates membership rosters, and maintains a library of bylaws for the various advisory bodies. The office is also a resource to the various City departments with respect to the Ralph M. Brown Act, the City of Irvine Sunshine Ordinance, public records requests, and meeting procedural questions. The City Clerk is the filing officer for Fair Political Practices Commission (FPPC) Form 700 Statements of Economic Interests, Campaign Statements, and Lobbyist Reports as required by City and State laws. The City’s Conflict-of-Interest Code outlines which commission / committee members are required to file FPPC Form 700.

2.4 City Attorney

The City Attorney is the primary resource for understanding compliance with City, State, and Federal laws, including but not limited to the Ralph M. Brown Act and conflict of interest regulations.
Chapter Three – Meeting Protocol

3.1 Agenda Preparation and Posting
Agendas and staff reports for commission and committee meetings are prepared by staff in accordance with the City's agenda preparation guidelines (City of Irvine Sunshine Ordinance) and the Ralph M. Brown Act ("Brown Act"), also sometimes referred to as the open meeting law. The Brown Act is explained in detail in Chapter Four.

Agendas for regular meetings must be posted no later than twelve (12) days for commissions, and 72 hours for committees, prior to the meeting date/time. Agendas for special meetings must be posted no later than five (5) days for commissions, and 24 hours for committees, prior to the meeting date/time. Your staff liaison will ensure that you are provided an agenda packet in a timely fashion prior to each commission or committee meeting. The agenda packet will include the posted meeting agenda notice, staff reports and recommended actions, and general information. Once the agenda is posted and distributed to a majority of the commission/committee members, it becomes a public record.

Meeting agendas, staff reports, notices, and minutes of each advisory body are maintained by the City in accordance with the City’s records retention schedule. Following the meeting, staff will prepare the minutes and place them on the subsequent agenda for approval.

3.2 Preparation for Meetings
- Be prepared. Thoroughly review the agenda packet, including agenda reports and recommended actions, and any other materials before the meeting. The issues that come before commissions/committees are important to the community as a whole and demand your consistent attention.

Some questions to ask yourself may include:

- What is the history behind the item?
- What are some public concerns and what are the long-term interests of the community?
- What are we trying to accomplish and what are the benefits/drawbacks?
- What guidance can be found in our foundational documents?

If you have additional questions regarding the agenda or agenda report, contact your Department Director before the meeting for clarification or additional information.

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

- Strive to appreciate differences in approach and points of view. Diversity of ideas sustains a thoughtful dialogue and a vibrant community. Likewise, take care to articulate your own ideas. Remember that your individual voice is a critical part of the whole dialogue. Again, furthering common goals takes cooperation, flexibility, and a broad-based view of the public interest. If in doubt, return to the foundational documents to guide your understanding of the complexities of an issue.

- Ask for clarification if you are unsure about something during the meeting. Your understanding of issues is important. Each commission and committee has a City staff liaison to provide information to assist the members throughout the decision-making process.

3.3 Rules of Debate

Unless otherwise provided by law, Robert's Rules of Order, Newly Revised, governs the general conduct of committee or commission meetings.

3.3.1 Chairperson

The Chairperson (presiding officer) may move or second a motion, and debate as Chairperson. The Chairperson is subject to the limitations of debate that are imposed on all members and shall not be deprived of any of the rights and privileges of a member.

3.3.2 Commission/Committee Members

Every commission or committee member desiring to speak shall address the Chairperson, and upon recognition by the Chairperson, shall limit comments to the question under debate, avoiding all indecorous language and references to personalities. A member, once recognized, shall not be interrupted except in accordance with rules of parliamentary procedure (for example, point of order, parliamentary inquiry, question of privilege, or appeal of Chairperson’s procedural ruling).

3.3.3 Addressing the Commission/Committee from the Floor

Securing Permission to Speak

A member of the public desiring to address a commission or committee shall first secure permission from the Chairperson. Any commission or committee member may also request of the Chairperson that a member of the public be recognized to speak. Remarks should be directed to the matter being considered.
Chapter Three – Meeting Protocol (Cont.)

**Individuals**

So that their identities are accurately reported in the record, persons addressing the commission or committee are requested to give their name in an audible tone of voice and fill out a speaker’s card provided for that purpose. However, persons shall not be denied the opportunity to address the commission or committee because they decline to identify themselves or to fill out a speaker’s card. The time limit for public testimony shall be as stated in the agenda, or at the discretion of the Chairperson.

All remarks shall be addressed to the commission or committee as a whole and not to any individual member or to members of the audience. No person, other than a member of the commission or committee, and the person having the floor, shall be permitted to enter into any discussion without the permission of the Chairperson.

While commission or committee members may ask questions of a speaker, they should not debate matters with a speaker. All remarks shall be delivered in a respectful manner.

**Spokesperson for Group Presentations**

Organized groups that wish to make a presentation longer than the time allowed for public testimony should contact the commission or committee staff prior to the meeting. Exceptions to time limits imposed upon speakers are at the discretion of the Chairperson.

3.4 **Decorum in Meetings**

- Arrive promptly to ensure the meeting is called to order on time.
- Be fair, impartial, and respectful of the public, staff, and each other. Give your full attention when others speak.
- Conclude public testimony before commission or committee members begin serious deliberation on an issue.
- Balance multiple views, neither favoring nor ignoring one individual or group over another. Your obligation is to represent a broad-based view of the community’s long-range interests.
- Remember that your commission or committee exists to take actions and/or develop recommendations to the City Council in the interest of advancing City Council policies and addressing community issues. It is not simply a discussion group.
3.5 Role of Chairperson

The Chairperson shall preserve order and decorum at all meetings of the commission/committee, announce the decisions taken, and decide questions of order. The Chairperson is responsible for ensuring the effectiveness of the group process. A good Chairperson balances moving the discussion forward with involving all of the commission/committee members and allowing for adequate public participation. The Chairperson will also endeavor to end meetings at a reasonable hour. In the absence of the Chairman/Chairwoman, the Vice Chairperson shall act as presiding officer.

The Chairperson will:

- Start meetings on time and keep the agenda in mind in order to give each item sufficient time for consideration.
- Announce at the start of a meeting if the order of agenda items is to be rearranged for convenience, for response to those attending only for certain items, or for better pacing of the agenda.
- Ensure that the public understands the nature of the issue being discussed (for example, reason for discussion, process to be followed, opportunities for public input, timeline for decision).
- Keep discussion focused on the issue at hand.
- Solicit opinions from commission/committee members and encourage evaluation of new, tentative, or incomplete ideas.
- If the body’s bylaws or policies impose time limits upon board members or the public, the rule may be enforced at the discretion of the Chairperson.
- Protect commission/committee members, staff, and the public from personal attacks.
- Provide structure for addressing complicated issues.
- Refer to staff or legal counsel when technical guidance is required.
- Attempt to reach decisions expeditiously on action items. At those times when action would be premature and additional analysis is needed, the Chairperson will guide discussion toward a timeline or framework for responsible action.

3.6 Preparing Motions

Commission/committee meetings are conducted according to parliamentary procedure. As the presiding officer, the Chairperson’s rulings must be followed unless he/she is overruled by a majority vote of the body upon an appeal of a ruling.
When a commission/committee member wishes to propose an action on a particular item on the posted agenda for the commission/committee to consider, the member makes a motion.

Examples of Common Motions:
- **Delay consideration:** “I move to continue the item until…” (date specific or date uncertain).
- **Lay on the Table:** "I move to lay the question on the table.” A motion to lay a pending question aside temporarily in order to take up something else of immediate urgency. The motion requires a 2/3 vote for adoption.
- **Limit or Extend Debate:** “I move that debate be limited to one speech of three minutes for each member.” The motion requires a 2/3 vote for adoption.
- **Close Debate:** “I move (or call) the previous question.” This ends debate immediately in order to call for a motion for the previous question. The motion requires a 2/3 vote for adoption.
- **Request More Study:** “I move to refer this to staff or (committee) for further study.”
- **Request Information:** “Point of information…..”
- **Amend a Motion:** “I move to amend the motion by…” If the amendment is accepted by the maker and a second is made, then it is considered a “friendly amendment” and no separate vote is required. If it is not accepted, then a separate vote to amend the main motion is required. The amendment must be voted on before the main motion.
- **Adopt a Staff Recommendation:** “I move to adopt staff recommendation to…”
- **Deny Staff Recommendation:** “I move to deny staff recommendation to…”
- **Modify Staff Recommendation:** “I move to adopt the recommendation with the following modifications:…”

Properly phrasing a motion can be difficult and corrections may be necessary before it is acted upon. Until the Chairperson states the motion, the member making the motion may rephrase or withdraw it.

Members may wish to write out difficult motions. If a motion gets too complicated, call a recess and have staff assist with the wording.

It is best to avoid including more than one proposal in the same motion. This is especially important when commission/committee members are likely to disagree.
Any member may make a motion to bifurcate or divide a motion in order to treat each proposal as a separate motion.

A motion goes through the following steps:

1. The member asks to be recognized by the Chairperson.
2. The member makes the motion: “I move that we…”
3. Another member seconds the motion: “I second the motion.”
4. The Chairperson restates the motion, or asks the recording secretary to do so, and asks for discussion on the motion.
5. When the Chairperson determines that there has been enough discussion, the debate may be closed with: “I call the question.” or “Is there any further discussion?”
6. If no one asks for permission to speak, the Chairperson then puts the motion to a vote: “All those in favor say aye. All those opposed say nay.” If voting lights are used, the Chairperson will state, “Please vote.”
7. The Chairperson should restate the motion prior to the vote to ensure the motion is clearly understood by all. Any member may request a roll call vote on a motion.
8. After the vote, the Chairperson or the recording secretary announces one of the following:
   b. “The motion carries ___ to ___ (identifying the number of aye and nay votes, and listing individually if requested).”
   c. “The motion has failed.”
Chapter Four – Legal Matters

4.1 The Ralph M. Brown Act and the City of Irvine Sunshine Ordinance

Most City of Irvine advisory bodies are subject to State law governing open meetings related to proceedings of local agencies. The California law governing open meetings, formally entitled the Ralph M. Brown Act and commonly referred to simply as the Brown Act, is found in California Government Code Section 54950 et seq.

The Brown Act was enacted by the Legislature to ensure that local public agencies deliberate and take action on governmental matters at meetings open to the public and in which the public may participate. To further this goal, the Brown Act generally requires that all items proposed to be discussed or voted at a local agency meeting be noticed on a posted agenda. Agendas must include a brief description of each such item.

The City of Irvine Sunshine Ordinance (Ordinance No. 18-10) was adopted by the City Council on November 13, 2018 to significantly bolster public transparency and the dissemination of information, so that citizens may be fully informed and retain control over the instruments of local government. The City of Irvine Sunshine Ordinance applies to the City Council, Orange County Great Park Board, and all City Commissions.

Agenda Materials

With limited exception, the public must also have access to all staff reports and writings in connection with an agenda item once they are disseminated to a majority or all of the members of an advisory body. This includes writings distributed by staff, a board member or the public after the posting of the agenda or during a meeting.

Public Comments

The posted agenda also shall indicate when members of the public have the opportunity to address the commission/committee. Members of the public may testify to any agenda item before action is taken. The public may also testify to non-agenda matters that fall within the jurisdiction of the advisory body. Although the commission or committee is prohibited from engaging in discussions or acting on matters not on the agenda, a member of the advisory body may briefly respond to statements or questions posed by the public; ask questions for clarification; refer the matter to staff; or direct staff to place a matter of business on a future agenda. Commission or committee members may also make brief announcements or report on his/her own activities within the purview of the advisory body.
Non-Agendized Items

Discussion or action on items that are not included in the posted agenda may only occur in limited circumstances. To discuss or act on an item not included in the posted agenda, a commission/committee must:

- Determine that the need to take action arose after the agenda was posted, and that the action is required prior to the next meeting, with a brief explanation of the circumstances constituting the need for action and the reason the need arose after posting the agenda. This explanation should be included in the meeting minutes.
- Approve the above determinations by a vote of at least two-thirds of the members of the body, or by a unanimous vote if less than two-thirds of the members are present.
- Discuss and take action on the item if the determinations are approved.
- Include that action in the meeting’s minutes.

Informational items placed on an agenda may not be acted upon at the meeting. Any member may, however, request that the informational item be placed on a future agenda for consideration.


4.1.1 Meeting Types

The Brown Act regulates a legislative body’s regular meetings, adjourned meetings, special meetings, and emergency meetings. In addition, the City of Irvine Sunshine Ordinance further increases transparency and participatory democracy by expanding Brown Act requirements for the City Council, Orange County Great Park Board, and City Commissions.

- “Regular meetings” occur at the dates, times, and locations set by resolution, ordinance, bylaws or other formal action of the legislative body and are subject to twelve (12) day (Commissions) and 72-hour (Committees) posting requirements.
- “Adjourned meetings” are regular or special meetings that have been adjourned to a time and place specified in the order of adjournment, usually to a date prior to the next Regular Meeting.
Chapter Four – Legal Matters (Cont.)

- “Special meetings” are called by the chairperson or a majority of the legislative body to discuss specific items on the agenda, and are subject to five (5) day (Commission) and 24-hour (Committee) posting requirements.

- “Emergency meetings” are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities, and require a one-hour notice prior to holding the meeting.

Commission/committee staff is responsible for identifying the type of meeting and posting all notices, including the agenda and any notice of adjournment, and will make available to the public copies of agendas, notices, any supplemental documentation, and minutes in accordance with the Brown Act, the Public Records Act, the City of Irvine Sunshine Ordinance, and the City’s records retention schedule.

4.1.2 Regular Meetings

The Brown Act requires each legislative body to set the time for regular meetings by ordinance, resolution, bylaws, or whatever specifies the conduct of that body’s business. Traditionally, this has been the bylaws of the legislative body. City Council approves all changes in bylaws, including the change of scheduled meeting dates and times.

Under City Council policy, regular meetings are generally held at City Hall or at other City facilities. Meetings may be held outside City facilities when City space is not available. Neighborhood meetings may be held outside City facilities.

The Brown Act generally requires boards, commissions and committees to conduct public meetings. A “meeting” is considered to take place any time that a quorum of the advisory body gathers to discuss that body’s business or to take action. Further, the Brown Act prohibits a quorum from meeting privately. (A “task force” may or may not be subject to the Brown Act depending upon its composition and purpose.) To this end, the Brown Act specifically prohibits “any use of direct communication, personal intermediaries or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.” Hence the prohibition extends not only to personal contacts of the commission or committee members among themselves outside a public meeting, but also prohibits “serial” meetings whereby information is ultimately exchanged among a quorum of the members via in-person discussions, by phone or by email. The preferred course of action for members needing information should be through contact with City staff.
4.1.3 Email Communications between Commission Members

Because email communications can ultimately lead to the exchange of information intended to, or which may, create collective concurrence among a quorum of commission/committee members, email communications between commission/committee members relative to commission/committee business should be avoided. While two members of a five-member board, for example, may appropriately communicate with one another by way of email, the “forwarding” of such an email message to a third member could result in a Brown Act violation.

4.1.4 Communications with the Public Outside Meetings

The Brown Act does not limit a commission or committee member acting on his or her own outside public meetings. This exception recognizes the right to confer with constituents, advocates, consultants, the media, or City staff. However, members of commissions and committee should exercise care and good judgment with respect to information learned as a result of such contacts. Decisions at public meetings should be based on a consideration only of the information, testimony and documents that has been presented to all members at or in connection with the meeting, and not on private discussions or transmittals (which are sometimes referred to as ex parte communications).

4.1.5 Adjournment or Continuance

A legislative body may adjourn or continue any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the adjournment or continuance notice. A copy of the adjournment or continuance notice shall be conspicuously posted on or near the door where the meeting was held within twenty-four (24) hours after the time of adjournment or continuance. If the matter is continued to a time less than twenty-four (24) hours after the adjournment, a copy of the continuance notice shall be posted immediately following the meeting that was continued.

4.2 Conflict of Interest/Statements of Economic Interests Form 700

The Political Reform Act (PRA) was adopted by the voters of California as an initiative (Proposition 9) in 1974. The Fair Political Practices Commission (FPPC) is the enforcement agency for the Political Reform Act. One of the PRA’s main purposes is to prevent financial conflicts of interest on the part of public officials. The Act requires public officials to disclose all financial interests, such as investments, interests in real estate or sources of income, which the official may possibly affect by the exercise of his or her official duties. If a public official has a conflict of interest, the PRA may require the official to disqualify himself or herself from making or participating in a government decision, or using his or her official position to influence a government decision.
What is a Conflict of Interest?

The Political Reform Act of 1974, which is codified as Government Code Section 87100 et seq., provides that no public official at any level of State or local government shall make, participate in making, or in any way attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.

An official has a financial interest in a decision within the meaning of Section 87100 of the PRA if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

1) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars ($2,000.00) or more.

2) Any real property in which the public official has a direct or indirect investment worth two thousand dollars ($2,000.00) or more.

3) Any source of income, other than gifts and other 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 to, received by or promised to the public official within twelve months prior to the time when the decision is made.

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

5) Any donor, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty ($250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made.

For purposes of Section 87100, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own (directly, indirectly, or beneficially) a ten percent interest or greater.
Chapter Four – Legal Matters (Cont.)

How does the Political Reform Act prevent Conflicts of Interest?

1) By Disclosure: The Political Reform Act requires every public official to disclose all financial interests, such as investments, interests in real estate (real property), or sources of income, which the official may possibly affect by the exercise of his or her official duties. “Gifts” as defined by the PRA that you receive or accept may also be subject to disclosure. Gifts aggregating $50 or more in a calendar year generally must be disclosed. No public official may accept gifts aggregating $500 or more in a calendar year from the same source. (This amount is adjusted every two years.) In addition, you may be subject to disqualification as a result of accepting gifts over that amount from the same source within the twelve month period before the proposed decision. Disclosure is made on a form called a “Statement of Economic Interests Form (Form 700).

The City of Irvine has adopted a Conflict of Interest Code which requires certain designated employees, consultants and members of specified City boards, commissions and committees who engage in governmental decisions to declare personal financial information by filing a Form 700. Form 700 must be filed upon assuming office and annually thereafter. Upon appointment, the City Clerk will provide each commission or committee member who is required to file Form 700 the necessary documents for filing. Form 700 filings are retained on file by the City Clerk and are deemed a public record.

2) By Disqualification: If a public official has a conflict of interest, the Political Reform Act requires the official to disqualify himself or herself from making or participating in a governmental decision, or using his or her official position to influence a governmental decision.

How can a public official determine if he or she has a Conflict of Interest?

Having a conflict of interest is not necessarily forbidden or illegal. It is the failure to disclose and/or the participation through voting or attempting to influence on issues where one has a conflict that contributes to the illegal action, subjecting the individual to possible criminal and civil penalties, and nullifying the action of the City.

When a commission or committee member suspects that he or she may have a conflict of interest, the City Attorney may be consulted. The official may be referred to the FPPC for guidance or an opinion because the advice of the City Attorney cannot be relied on to excuse a violation of the PRA.

The “2017 Conflict of Interest Handbook” and “Recognizing Conflicts of Interest?” are resources provided by the FPPC and are included in Appendices A and B for reference. These resources provide a general overview of the laws regarding
potential financial conflicts of interest of public officials as well as reporting requirements. The applicability of the conflict of interest laws depends on the unique facts of each particular case. Questions regarding specific situations may be directed to the City Attorney or the FPPC.

Staff will provide maps to Planning Commissioners for the purpose of determining whether a conflict of interest exists in any particular matter coming before the Planning Commission as a direct result of the proximity of the individual’s property to a proposed project.

Real property in which the public official has an economic interest will be deemed “directly involved” where the real property is either the subject of the government action, or is located within 500 feet of the real property that is the subject of the governmental action. Real property is the “subject of government action” in any of the following contexts (FPPC § 18704.2):

- Zoning
- Rezoning
- Annexation
- De-annexation
- Land use entitlement
- License
- Permit
- Taxes
- Fees
- Public improvements (e.g., streets, water, sewer, etc.).

4.3 Code of Ethics

In 2006, the City Council passed Ordinance No. 06-01 adopting a Code of Ethics to establish clear and affirmative ethical principles and standards reflecting the core values of the community, and to support and encourage the highest personal and professional conduct at every level of municipal government. For purposes of the City’s Code of Ethics, “City officials” and “employees” are defined to include the following individuals:

- Mayor
- Mayor Pro Tempore
- Councilmembers
- City Council Executive Assistants
- City Manager
- Assistant City Manager
- City Clerk
• Department Directors
• Deputy Department Directors
• Chief of Police
• Deputy Police Chief
• City Attorney
• Zoning Administrator
• Planning, Community Services, Finance, and Transportation Commissioners, and any other commission that is advisory in nature.

The City’s Code of Ethics contains specific principles and standards of conduct to serve as guidelines for ethical behavior. Ordinance No. 06-01 which was codified as Municipal Code Section 1-6-101 et seq., can be found in Appendix G.

4.3.1 Ethical Public Service Ordinance - Measure H

On June 3, 2008, the City conducted a Special Election and as a result, the Irvine City Council Ethical Public Service Ordinance (Initiative Ordinance 08-03), or Measure H, was passed by Irvine voters. Measure H and codified as Irvine Municipal Code Sections 1-9-101 through 1-9-104 and is an extension of the City’s Code of Ethics. A copy of the Ordinance is also included in Appendix H.

Measure H prohibits elected officials, their Executive Assistants and appointed Commissioners from engaging in compensated employment or service for the purpose of lobbying for any private individual or organization before any local public agency in Orange County. In addition, the measure prevents the same individuals from having a personal investment or monetary interest in City contracts.

Measure H also requires the Mayor and City Councilmembers, their Executive Assistants and appointed Commissioners to execute a form acknowledging they have received a copy of the measure and agree to abide by its provisions. The forms are then filed with the City Clerk.

4.3.2 Ethics Training - AB1234

Assembly Bill 1234 (Government Code Section 53235) which became effective in 2005, requires the City to provide ethics training for all members of a legislative body that receive compensation, salary or stipend, or reimbursement of expenses related to his/her official duties. The term “legislative body “ includes not only the City Council, but also certain commissions, committees or boards. The following legislative bodies are required to receive training: Community Services Commission, Finance Commission, Planning Commission, Senior Citizen’s Council, Transportation Commission, City Council, and the Orange County Great
Park Board. Applicable officials must receive two hours of ethics training within one year of the first day of service, and subsequently at least once every two years. For those of you who are subject to this requirement, the City’s Human Resources Office will contact you to arrange for the required training.

4.4 Campaign Contributions by Appointees and Commissioners

California state law (Government Code 84308) prohibits any “officer” (which includes the governing board or commission) of a public agency who is running or has run for elective office from participating in decisions affecting his or her campaign contributors. The law disqualifies the officer from participating in certain proceedings if the official has received campaign contributions of more than $250 from a party, participant or their agents within the 12 months preceding the decision. It also requires disclosure on the record of the proceeding of all campaign contributions received from these persons during that period. In addition, Government Code Section 84308 prohibits solicitation or receipt of campaign contributions in excess of $250 during such proceedings, or for three months after the decision, from parties, participants or their agents.

For example, Sarah Smith is a candidate for the Smalltown City Council. Smith is also on the Smalltown Planning Commission. John Builder has a permit request pending before the planning commission. Under Government Code Section 84308, Smith is prohibited from soliciting or receiving any contribution of more than $250 from Builder or Builder’s agent. If Smith did receive a contribution of more than $250 from Builder, Smith and Builder would be required to disclose the contribution in the record of the planning commission meeting. Smith would also have to disqualify herself from considering Builder’s permit request unless she returns that portion of the campaign contribution in excess of $250 within 30 days after learning of the contribution and Builder’s pending permit.

Additional information about conflicts created by campaign contributions is in Appendix I or on the FPPC web site at fppc.ca.gov.
Chapter Five – Structure of Government

5.1 City Council/City Manager Form of Government

The City of Irvine is a Charter City. As a Charter City, there is a differentiation between the policy-making function and the administrative function of government.

The City of Irvine operates under a City Council/City Manager form of government, which provides clear lines of authority and responsibility with the City Manager serving as chief administrator in charge of day-to-day operations of the City. The voters elect the Mayor and the City Council to formulate municipal policy. When the City Council makes a decision on an ordinance, law, or policy, the City Manager is responsible for implementing those policies.

The Mayor and City Councilmembers interact with the various City departments and City staff through the City Manager. All requests from City Councilmembers for information and staff assistance flow directly to the City Manager, who facilitates the request.

5.2 City Organization

5.2.1 City Manager's Department

The City Manager’s Department is entrusted with strategic business planning, budget, public information, and administrative functions of the organization. In addition, provides legislative support, policy development and implementation, and legal services.

The City Manager’s Department also provides administrative oversight for planning and development of the Orange County Great Park.

5.2.2 City Clerk Department

The City Clerk Department is responsible for the oversight of municipal elections, records management, central reception, duplicating, and mail operations. The City Clerk also acts as a compliance officer for federal, state, and local statutes including the Political Reform Act, the Brown Act, the Public Records Act, and the City of Irvine Sunshine Ordinance.

5.2.3 Community Development Department

The Community Development Department is entrusted with planning the City’s residential communities and commercial/industrial centers, as well as ensuring that all construction in the City complies with building codes. Additionally, the department is responsible for implementing the City’s Redevelopment and Housing Programs.
5.2.4 Community Services Department

The Community Services Department delivers or coordinates the delivery of social, recreational, health and human services, and other support programs that enhance the quality of life enjoyed by Irvine’s residents. The department oversees planning and construction of developer-built public parks and facilities, and designs, constructs, rehabilitates and maintains all public facilities citywide. Additionally, it is responsible for development of public policy and programs related to the wide array of municipal environmental concerns including climate change, energy conservation, water conservation, solid waste, recycling, and open space habitat restoration protection.

5.2.5 Financial Management & Strategic Planning Department

The Financial Management & Strategic Planning Department is responsible for overseeing Fiscal Services, which includes accounting, treasury, debt administration, and purchasing functions.

5.2.6 Human Resources & Innovation Department

The Human Resources and Innovation Department is responsible for overseeing employee engagement, morale, staff development, interdepartmental collaboration, and Information Technology.

5.2.7 Public Safety Department

The Public Safety Department is entrusted with providing the public's safety within the City’s residential communities, commercial and industrial centers, and in recreational open space.

5.2.8 Public Works Department

The Public Works Department is responsible for developing, building, and maintaining public infrastructure, including streets, sidewalks, bridges, traffic signals, bikeways and landscaping.

5.2.9 Transportation Department

The Transportation Department is responsible for traffic matters, transit expansion and transportation projects.
5.2.10 Orange County Great Park Corporation

The Orange County Great Park Corporation is a 501(c)(3) Non-Profit Public Benefit Corporation and a 501(c)(9) Supported Organization of the City of Irvine whose mission is to develop, operate, preserve and protect the Orange County Great Park for the benefit and enjoyment of all its visitors. The Orange County Great Park Board is comprised of the five members of the City Council.
Chapter Six – Public Records / Media Relations

6.1 Public Records

Public records are maintained by the City Clerk as directed by the Government Code and managed through the adopted Records Retention Schedule. Each City Department also houses and manages active public records in their respective work areas.

All actions of the City Council are recorded and maintained as part of the official public record. While there are some specific exceptions, the general rule is that the information is public. City Council actions come in several forms. Formal actions are captured in the minutes of the meeting. Resolutions establish policy and provide direction. Ordinances set the code or laws under which the City is operated.

All agenda related materials, minutes and resolutions of City commissions and committees are also considered public records. These documents are prepared by the respective City Departments supporting a particular City commission or committee. The City Clerk's Office maintains these records for the long term according to retention schedules in Irvine Quick Records, the City's Electronic Records Management Program. Irvine Quick Records is accessible via the City's web site and houses over 16 million public records.

6.1.1 Electronic Mail (Email)

Electronic mail communication generally constitutes “preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business” within the meaning of Government Code Section 6254(a), unless the email communication is printed and retained in official City files. Further, the disposition of the types of records (email) generated or received by the City of Irvine, is authorized for disposition as outlined in accordance with Government Code Section 34090 et seq., upon the consent in writing by the Department Director, the Municipal Records Administrator, and the City Attorney, without further action of the City Council. (Adopted on 06-11-02 by City Council Resolution No. 02-69)

The City’s current retention period for email communications residing on City computers is two years. This means that any email sent or received will be deleted from the City’s server after that time.

The general rule for public officials and staff is to always be cautious and consider what you say, write or email because it may become part of the public record. It is very common to receive a request under the California Public Records Act or a subpoena asking for specific public records, including email on a variety of topics. Email, voicemail, text messaging, correspondence, other forms of communication and casual conversations are powerful tools and necessary in the work place; however, it is important to be aware that in the public work environment, email communications may be subject to public disclosure.
6.2 Media

6.2.1 Press Releases
The City’s Public Information Office (PIO) regularly issues press releases on a variety of City projects, programs, special events, and issues affecting the City. In addition, the Public Information Office issues media advisories to the City Council advising them of contact with the media on specific topics and potential stories.

6.2.2 Irvine Community Television (ICTV) / Electronic Bulletin Board Service
Irvine Community Television (ICTV) is a 24/7 government access channel programmed and operated by the City of Irvine Public Information Office and is currently available to COX Cable subscribers in Irvine on channel 30 and via web streaming on the City’s website. The station serves the citizens of Irvine by providing accurate and timely information about local issues, activities and events and serves as a forum for ongoing communication and accessibility of municipal government to residents.

The City offers a graphic video Bulletin Board service that airs when video programming is not being aired. The bulletin board is also managed by the Public Information Office. It is offered as a free public service to promote the following:

- City programs, services, employment opportunities and projects;
- Contact information for City and relevant government offices;
- Schedule for ICTV programming;
- Information about events sponsored or co-sponsored by the City of Irvine;
- Information about events and programming of interest to residents of Irvine from authorized agencies and organizations

ICTV may not promote or endorse a political candidate, whether or not a current officeholder, or a ballot measure. Advertisements on behalf of a political candidate or ballot measure are prohibited.

For additional information on ICTV programming and procedures, please contact the Director of Public Affairs and Communications.

6.2.3 Web Site
The City of Irvine’s web site is coordinated through the Public Information Office and can be accessed at cityofirvine.org. The web site includes general information about the City, access to ICTV, current press releases, archived agendas and videos of past and present City Council meetings, and a myriad of information on City programs, projects and special events.
6.2.4 Community Magazine

The City’s official community magazine, *Inside Irvine*, is mailed quarterly to all households in the City. The magazine provides a synopsis of timely information and a calendar of community events scheduled for the immediate future.
APPENDICES
City of Irvine
Sunshine Ordinance
(Ordinance 18-10)
CITY COUNCIL ORDINANCE NO. 18-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ADDING DIVISION 15 OF TITLE 1 OF THE IRVINE MUNICIPAL CODE - PUBLIC MEETINGS AND PUBLIC RECORDS, TO BE KNOWN AS THE IRVINE SUNSHINE ORDINANCE, AND MAKING CONFORMING MODIFICATIONS TO CHAPTER 2-1 (GENERAL) OF DIVISION 2 OF TITLE 1, CHAPTER 2-2 (RULES OF ORDER) OF DIVISION 2 OF TITLE 1, CHAPTER 4-1 (IN GENERAL) OF DIVISION 4 OF TITLE 1; CHAPTER 4-2 (IN GENERAL) OF DIVISION 4 OF TITLE 1, DIVISION 13 (FINANCE COMMISSION) OF TITLE 2, DIVISION 3 (COMMUNITY SERVICES COMMISSION) OF TITLE 3, DIVISION 3 (PLANNING COMMISSION) OF TITLE 5, AND CHAPTER 9 (TRANSPORTATION COMMISSION) OF DIVISION 3 OF TITLE 6 OF THE IRVINE MUNICIPAL CODE

WHEREAS, the City has a duty is to serve the public and to accommodate those who wish to obtain information about or participate in the City’s decision-making processes; and

WHEREAS, the City Council and City Commissions, including the Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission exist to conduct the people’s business; and

WHEREAS, the City Council recognizes and appreciates the enormous value of direct, active participation by citizens in their government, and of the primary importance of guaranteeing public access to and participation in the operation and development of the community; and

WHEREAS, Government Code section 54953.6 provides “Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in [the Brown Act]. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body”; and

WHEREAS, the City has historically met and exceeded the requirements of California’s open meeting law, the Ralph M. Brown Act (Government Code §§ 54950 et seq. [Brown Act]), regarding the timelines for posting meeting agendas for special meetings, and generally exceeds Brown Act requirements for posting meeting agendas for regular meetings; and
WHEREAS, the City Council values and appreciates the input and participation of members of the public in the open meeting process, and believes that further enhancements beyond the minimum requirements set forth in the Brown Act (and beyond the City’s historic practices, which have exceeded Brown Act requirements) will make public participation easier and more meaningful; and

WHEREAS, revisions to the Irvine Municipal Code that will increase transparency, participation, and accountability in public processes include: (a) increasing standard regular agenda publication timelines from five (5) days prior to a regular meeting and one (1) day prior to a special meeting, to twelve (12) days prior to a regular meeting and five (5) days prior to a special meeting; (b) mandating agenda posting in no fewer than four locations that are open to the public twenty four (24) hours a day; which postings shall be in addition to the on-line agenda postings available on the City’s website; (c) clarifying that the Rules of Order applicable during City Council meetings apply equally to the Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission; (d) codifying and updating the City’s practices for recording meetings of public bodies and making those recordings available to the public at no charge; and (e) codifying standards for the preparation of meeting minutes.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. The above recitals are true and correct and incorporated herein.

SECTION 2: Division 15 of Title 1 Public Meetings and Public Records is hereby added to the Irvine Municipal Code to read as follows:

Division 15 of Title 1

PUBLIC MEETINGS AND PUBLIC RECORDS

Sections:

Sec. 1-15-101 Findings and purpose.

Sec. 1-15-102 Citation.

Sec. 1-15-103 Definitions.

Sec. 1-15-104 Meetings to be open and public – Application of Brown Act.

Sec. 1-15-105 [Reserved]

Sec. 1-15-107 Notice and agenda requirements – Regular meetings.

Sec. 1-15-108 Notice and agenda requirements – Special meetings.

Sec. 1-15-109 Conduct at meetings.

Sec. 1-15-110 Minutes and recordings.

Sec. 1-15-111 Responsibility for implementation and administration.

Sec. 1-15-101 Findings and purpose.

The Irvine City Council finds and declares:

A. The City has a duty to serve the public and to accommodate those who wish to obtain information about or participate in the decision-making process. The City and City Commissions, including the Planning Commission, Finance Commission, Community Services Commission, and Transportation Commission exist to conduct the people’s business.

B. The City Council, in prescribing the provisions of this division, hereby states its recognition of the enormous value of direct, active participation by citizens in their government, and of the primary importance of guaranteeing public access to and participation in the operation and development of the community.

C. The provisions of this division shall be interpreted to further the intent of the City Council to assure that the City’s deliberations and operations are open to the public. This division is intended to clarify and supplement the Irvine City Charter, the Ralph M. Brown Act, and the California Public Records Act to assure that the people of the City of Irvine can be fully informed and thereby retain control over the instruments of local government in their city.

Section 1-15-102 Citation.

This division may be cited as the Irvine Sunshine Ordinance.

Section 1-15-103 Definitions.

Words or phrases in this division shall be defined pursuant to the Ralph M. Brown Act, Government Code § 54950 et. seq. and the Public Records Act, Government Section 6250 et. seq. unless otherwise specified as follows:
A. *Agenda* means the agenda of a local body which has scheduled a meeting. The agenda shall meet the requirements of Government Code § 54954.2, except that the timing requirements of this division shall control. For closed sessions, the agenda shall meet the requirements set forth in Government Code § 54954.5. The agenda shall contain a brief, general description of each item of business to be transacted or discussed during the meeting and shall avoid the use of abbreviations or acronyms not in common usage and terms whose meaning is not known to the general public. The agenda may refer to explanatory documents, including but not limited to, correspondence or reports, in the agenda related material. A description of an item on the agenda is adequate if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item.

B. *Agenda related materials* means the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the local body, which provide background information or recommendations concerning the subject matter of any agenda item. Notwithstanding the foregoing, agenda related materials shall not include: (1) the written text or visual aids for any oral presentation so long as such text or aids are not substituted for, or submitted in lieu of, a written report that would otherwise be required to meet the filing deadlines of this Division, and (2) written amendments or recommendations from a member of a local body pertaining to an item contained in agenda related materials previously filed pursuant to Section 1-15-107 or Section 1-15-108.

C. *Local body* means the Irvine City Council, the Irvine Planning Commission, the Irvine Finance Commission, the Irvine Community Services Commission, and the Irvine Transportation Commission. “Local body” shall not mean any congregation or gathering which consists solely of employees of the City of Irvine.

D. *Meeting* shall have the meaning set forth in Government Code § 54952.2(b)(1), which states “‘meeting’ means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Government Code § 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the local body and shall also mean a meal or social gathering of a majority of the members of a local body immediately before, during or after a meeting of a local body.” Communications shall constitute a “meeting” where members of a local body use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the local body.

1. As specified in Government Code § 54952.2(b)(2), the definition of meeting “shall not be construed as preventing an employee or official
of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by [the Brown Act] with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or positions of any other member or members of the legislative body."

2. As specified in Government Code § 54952.2(c), the following categories of communications shall not be subject to the Brown Act or the requirements of this Division.

   a. Individual contacts or conversations between a member of a local body and any other person that do not otherwise constitute a meeting under subsection (D)(1);

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

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

   d. The attendance of a majority of the members of a local body at an open and noticed meeting of another local body of the local agency, or at an open and noticed meeting of a local body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency; or
e. The attendance of a majority of the members of a local body at a purely social and ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency.

E. *Notice* means the posting of an agenda in a location that is freely accessible to the public 24 hours a day and as additionally specified in Section 1-15-107 and Section 1-15-108.

F. *On line* means accessible by computer without charge to the user.

G. *Software or hardware impairment* means a circumstance where the City is unable to utilize computer software, hardware and/or network services to produce agendas, agenda related material or to post agendas on-line due to inoperability of software or hardware caused by the introduction of a malicious program (including but not limited to a computer virus), electrical outage affecting the City’s computer network, or unanticipated system or equipment failure. “Software or hardware impairment” may also include situations when the City is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitates deactivating the system network; however, the City shall make reasonable efforts to avoid a delay in the preparation, distribution, or posting of agendas and agenda related material as a result of required or necessary maintenance or installation of system upgrades.

**Section 1-15-104 Meetings to be open and public – Application of Brown Act.**

All meetings of local bodies specified in Section 1-15-103(C) shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code § 54950 et seq.) unless greater public access is required by this division, in which case this division shall be applicable.

**Section 1-15-106 Conduct of business – Time and place for meetings.**

A. Every local body, or the authority creating each local body, shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action.

B. Regular and special meetings of local bodies shall be held within the City of Irvine except to do any of the following:

1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local body is a party;
2. Inspect real or personal property which cannot be conveniently brought to Irvine, provided that the topic of such meeting shall be limited to items directly related to the real or personal property;

3. Participate in meetings or discussions of multi-agency significance that are outside Irvine, provided that any such meeting or discussion shall take place within the jurisdiction of one of the participating agencies and be noticed by the respective local body as specified in this division; or

4. Meet outside the City of Irvine with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the City of Irvine, and over which issue the other federal or state agency has jurisdiction.

C. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the City Manager or his or her designee. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.

D. No local body shall take any action at a meeting which occurs when a quorum of the local body becomes present at a meeting of a standing or ad hoc committee of the local body, although the committee may take action consistent with its jurisdiction and authority.

Section 1-15-107 Notice and agenda requirements – Regular meetings.

A. Twelve Day Advance Notice Requirement. Local bodies shall provide notice no later than twelve (12) days before the date of each of their respective regular meetings by:

1. posting a copy or image of the agenda in no fewer than four (4) locations freely accessible to the public twenty-four (24) hours per day;

2. making a copy or image of the agenda available in the City Clerk’s office and at the Irvine Police Department during regular business hours; and

3. posting a copy or image of the agenda on-line on the City’s website; provided, however, the failure to timely post a copy or image of the agenda online because of software or hardware impairment shall not constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.
B. Supplemental Agenda And Related Materials Requirements. Notwithstanding the notice provisions of Section 1-15-107(A), agendas for the local bodies may be amended or supplemented to include additional items or additional agenda-related materials no later than five (5) days before a regular meeting for the following reasons or under the following conditions:

1. to add an item due to an emergency or urgency that arose after the agenda posting deadlines required by Section 1-15-107(A);

2. to add an item that requires immediate action, where the need for action came to the attention of the local agency after the agenda posting deadlines required by Section 1-15-107(A);

3. to add an item that requires immediate action to avoid a substantial impact that would occur if the action were deferred to a subsequent special or regular meeting;

4. to add an item that requires immediate action which relates to federal, state, county or other governmental agency, including without limitation, actions on pending or proposed legislation and/or actions or the City’s eligibility for any grant or gift;

5. to add an item that relates to a purely ceremonial or commendatory action;

6. to add a closed session item relating to ongoing, proposed or threatened litigation;

7. to provide additional information to supplement the agenda-related material previously published with the agenda, provided that the additional information was not known to City staff or considered to be relevant at the time the agenda-related materials were filed. Examples of supplemental material permitted by this subsection are reports responding to questions or requests raised by members of a local body after posting and filing of the twelve-day agenda and materials, and analyses or opinions of the item by the City Attorney, any member of the City Council, or the Mayor;

8. to continue an agendized item to a future regular meeting of the local body provided that members of the public are given an opportunity to address the local body on the limited question whether to continue the item to a future meeting; or

9. to remove any item from a posted agenda.
C. Excuse of Sunshine Notice Requirements for Regular Meetings. An item may appear on an agenda and be acted upon by a local body, even though it fails to meet the notice requirements under Section 1-15-107(A) and/or Section 1-15-107(B), only if one of the following circumstances exists:

1. A majority of the legislative body first determines during a public meeting that an emergency situation exists, as defined by Government Code § 54956.5.

2. Two-thirds of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, all of those members present, determine that upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this division and any one of the following exists:

   a. there is a need to take immediate action on the item to avoid a substantial impact that would occur if the action were deferred to a subsequent special or regular meeting;

   b. there is a need to take immediate action which relates to federal, state, county or other governmental agency, including without limitation, actions on pending or proposed legislation and/or actions or the City’s eligibility for any grant or gift; or,

   c. the item relates to a purely ceremonial or commendatory action.

3. The item is placed on the agenda by the Mayor or a member of the City Council in a manner consistent with an adopted City Council policy and/or procedure.

D. Action on Items Not Appearing on the Agenda. Except as otherwise provided in Government Code § 54954.2, no action shall be taken on matters not appearing on the posted agenda

E. Future Meeting. Nothing in this section shall prohibit the local body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to Section 15-1-107(C) before or during a meeting.

F. Conforming Documents and Errata. Nothing in this Section shall prohibit the City Attorney from conforming a document to comply with technical requirements as to form and legality, nor shall this Section prohibit the distribution of an errata prepared by City staff to make minor corrections to published agenda materials.
G. Submittal of Additional Documents. The City Manager, City Attorney, City Clerk and their designees, in their capacities with the City, must submit public agenda related materials to the City Clerk or other responsible department in sufficient time to meet the deadlines of this Section and Section 1-15-108. However, the referenced officers may submit additional documents to the local body, and that body may accept the documents if it finds by a two-thirds vote of the members present that the additional information in the documents was not known to the officers or considered to be relevant by the officers at the time of the filing deadlines. Copies of such documents shall be made available to the public at the subject meeting. Documents submitted by outside parties may be distributed to and accepted by the local body at any time prior to or during the subject meeting. Documents submitted by outside parties prior to the meeting shall be made available to the public at the subject meeting. Documents submitted by outside parties at the meeting shall be made available to the public the following business day. Nothing in this Section or in any other provision of this division shall be interpreted to require that the City Manager, City Attorney or City Clerk submit to the City Clerk any documents that are not public records.

Section 1-15-108 Notice and agenda requirements – Special Meetings.

A. Special meetings of the local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:

1. posting a copy or image of the agenda in no fewer than four (4) locations freely accessible to the public 24 hours per day for at least five (5) days before the time of the meeting set forth in the agenda; and

2. making a copy or image of the agenda available in the City Clerk’s office and at the Irvine Police Department during regular business hours, at least five (5) days before the time of the meeting set forth in the agenda; and

3. posting a copy or image of the agenda on-line on the City’s website at least five (5) days before the time of the meeting set forth in the agenda. Notwithstanding the foregoing, the failure to timely post a copy or image of the agenda online because of software or hardware impairment shall not constitute a defect in the notice for a special meeting, if the local body complies with all other posting and noticing requirements; and

4. delivering a copy or image of the agenda to each member of the local body, to each local newspaper of general circulation, and to each media organization which has previously requested notice in writing at least five (5) days before the time of the meeting set forth in the agenda.
Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

B. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the local body except that the City Manager may designate an alternative meeting location provided that such alternative location is specified in the agenda and that notice pursuant to this Section is given at least five (5) days prior to the special meeting. This five (5) day notice requirement shall not apply if the alternative location is at the same address at which regular meetings of the local body occur.

C. To the extent practicable, the presiding officer or the majority of members of any local body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.

D. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this division if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.

E. Excuse of Sunshine Notice Requirements for Special Meetings. An item may appear on an agenda and be acted upon by a local body, even though it fails to meet the notice requirements under Section 1-15-108(A)-(D), only if one of the following circumstances exists:

1. A majority of the legislative body first determines during a public meeting that an emergency situation exists, as defined by Government Code § 54956.5.

2. Two-thirds of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, all of those members present, determine that upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this division and any one of the following exists:

   a. there is a need to take immediate action on the item to avoid a substantial impact that would occur if the action were deferred to a subsequent special or regular meeting;

   b. there is a need to take immediate action which relates to federal, state, county or other governmental agency, including without limitation actions on pending or proposed legislation and/or actions or the City’s eligibility for any grant or gift; or,
3. The item is placed on the agenda by the Mayor or a member of the City Council in a manner consistent with an adopted City Council policy and/or procedure.

Section 1-15-109 Conduct at meetings.

A. The Rules of Order of the City Council, as provided in chapter 3 of division 2 of this title, and any such amendments thereto, shall govern all proceedings of local bodies and are hereby incorporated into this division; provided, however, that references to the “Mayor” shall refer to the presiding officer of each local body, and references to “City Council” and/or “Council” shall refer to the local body.

B. No local body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the local body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the local body, even if the criticism implicates the performance of one or more public employees. Nothing in this subsection shall change the operation of law in the area of defamation.

Section 1-15-110 Minutes and recordings.

A. The City Council shall make a visual and audio recording of every open meeting. All other local bodies shall make an audio recording of every open meeting. Any recording of any open meeting shall be a public record subject to inspection and copying and shall not be erased, deleted or destroyed for at least five (5) years, provided that if during that five-year period a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. A copy of any such recording shall be provided, free of charge, upon request.

B. All local bodies shall record the minutes for each regular and special meeting convened under the provisions of this division. The minutes of the Council shall be kept by the clerk of the local body with a record of each particular type of business transacted set off in paragraphs, with proper subheadings; provided that the clerk of the local body shall be required to make a record only of such business as was actually passed by a vote of the local body, and shall not be required to record any remarks of a member of the local body, or of any other person, except at the special request of a member of the local body (per Section 1-2-311(E)); provided, further, that a record shall be made of the names of persons addressing the local body, the title of the subject matter to which the remarks related, and whether they spoke in support of or in opposition to such matter.
Section 1-15-111  Responsibility for administration.

A. The City Manager shall administer and coordinate the implementation of the provisions of this division for all local bodies, agencies and departments under his or her authority, responsibility or control.

B. The City Clerk or other responsible department shall timely post all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it.

SECTION 3. Division 2 of Title 1 City Council is amended as follows and shall in all other respects remain in full force and effect:

CHAPTER 2-1

GENERAL

Sec. 1-2-101. - Time and place of meetings.

A. Regular meetings of the City Council shall be held on the second and fourth Tuesdays of each month, and shall convene at the hour of 4:00 p.m. When the day for any regular meeting of the Council falls on a legal holiday, no meeting shall be held on such holiday; but such meeting shall be held at the same hour on the next succeeding business day which is not a holiday.

B. All meetings of the City Council shall be held at the Irvine City Council Chambers, One Civic Center Plaza, Irvine, California. However, any such meeting may be adjourned to another time, date and place certain within the City, provided that any change of meeting time, date and place shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.

Sec. 1-2-102. - Special meetings.

Special meetings may be called by the Mayor or a majority of the members of the City Council pursuant to the notice and agenda requirements for special meetings set forth in Chapter 2 of Division 15 of this Title, and Government Code § 54956. Only matters contained in such notice may be considered and only urgency ordinances may be adopted. No regular ordinances or orders for payment of money shall be considered at such special meetings.

Sec. 1-2-103. - Public meetings.

All meetings of the City Council shall be open to the public and comply with the Ralph M. Brown Act (Government Code § 54950 et seq.) and the Irvine Sunshine
Ordinance (Division 15 of Title 1) except "closed session" matters, as provided by law. Such closed sessions may be held only during the course of a duly called meeting.

CHAPTER 2-3

RULES OF ORDER

Sec. 1-2-301. - Agenda.

All meetings of the City Council shall be noticed via posting of the agenda in accordance with the notice and agenda requirements set forth in the Irvine Sunshine Ordinance (Division 15 of Title 1). Except as provided in Section 15-1-107 and/or as otherwise provided in Government Code § 54954.2, no action shall be taken on matters not appearing on the posted agenda.

Sec. 1-2-309. - Preparation of minutes.

The minutes of the Council shall be kept by the City Clerk with a record of each particular type of business transacted set off in paragraphs, with proper subheadings; provided that the City Clerk shall be required to make a record only of such business as was actually passed by a vote of the Council, and shall not be required to record any remarks of a member of the Council, or of any other person, except at the special request of a member of the Council (Section 1-2-311(E) is applicable); provided, further, that a record shall be made of the names of persons addressing the Council, the title of the subject matter to which the remarks related, and whether they spoke in support of or in opposition to such matter. Such minutes shall meet the minimum standards set forth in Chapter 2 of Division 2 of this Title, Section 15-1-108(B) (Minutes and Recordings).

SECTION 4. Division 4 of Title 1 Commissions and Committees is amended as follows and shall in all other respects remain in full force and effect:

CHAPTER 4-1

IN GENERAL

Sec. 1-4-104. - Application of State law and the Irvine Sunshine Ordinance.

All commissions and committees shall be subject to those sections of the California Government Code known as the "Ralph M. Brown Act" (Government Code § 54950 et seq.), and shall conduct their business in conformity therewith. All local bodies as defined in Section 15-1-103(C) shall comply with the additional requirements of the Irvine Sunshine Ordinance, and shall conduct their business in conformity therewith.
CHAPTER 4-2

COMMISSIONS

Sec. 1-4-207. - Meetings.

The commission shall meet at such times as may be established by the City Council. All meetings shall be opened to the public and shall conform to the provisions of the "Ralph M. Brown Act" (Government Code § 54950 et seq.) and to the extent such commission constitutes a local body under Section 15-1-103(C), it shall comply with the additional requirements of the Irvine Sunshine Ordinance. Special meetings may be called by the chair of the commission or upon the written request of at least a majority of its members.

Sec. 1-4-208. - Procedures.

A. Unless otherwise specifically provided by law or elsewhere in the Code, including the provisions of the Irvine Sunshine Ordinance, Robert's Rules of Order, Newly Revised, shall govern the general conduct of meetings of commissions. The adoption of Robert's Rules of Order is for the purpose of establishing a procedural framework for the conduct of meetings only. Any failure to adhere thereto shall in no way affect the validity of any action taken by the commission.

B. It shall be the duty of each commissioner to take an active part in the commission's deliberation and to act in whatever capacity the commissioner may be called. Absence from three consecutive meetings without the formal consent of the commission shall be deemed to constitute the retirement of the commissioner, and the position shall automatically become vacant.

CHAPTER 4-3

COMMITTEES

Sec. 1-4-302. - Structure.

The structure, composition, number of members, manner of their appointment or selection, and other matters necessary to the creation and operation of each committee shall be determined in each case by the authority which establishes such committee, subject, however, to compliance with this division and the Irvine Sunshine Ordinance.

SECTION 5. Division 13 of Title 2 Finance Commission is amended as follows and shall in all other respects remain in full force and effect:
Sec. 2-13-108. - Meetings and procedures.

A. The Finance Commission shall meet regularly at least once each month, at a time and place to be fixed by the City Council, and shall hold such other meetings as from time-to-time shall be called in the manner and form required by law, including the provisions of the Irvine Sunshine Ordinance.

B. The meetings and procedures of the Finance Commission shall be subject to and governed by the resolutions and ordinances of the City Council establishing rules and regulations for commissions and committees.

SECTION 6. Division 3 of Title 3 Community Services Commission is amended as follows and shall in all other respects remain in full force and effect:

Sec. 3-3-109. - Meetings and procedures.

A. The Community Services Commission shall meet regularly at least once each month, on a day to be fixed by the City Council, and shall hold such other meetings as from time-to-time shall be called in the manner and form required by law, including the provisions of the Irvine Sunshine Ordinance.

B. The meetings and procedures of the Community Services Commission shall be subject to and governed by the rules and regulations for commissions and committees set forth in Chapter 2 of Division 4 of Title 1 of the Code.

SECTION 7. Division 3 of Title 5 Commission (Planning) is amended as follows and shall in all other respects remain in full force and effect:

Sec. 5-3-107. - Meetings and procedures.

A. The Planning Commission shall meet regularly at least once each month on a day and place to be fixed by the City Council, and shall hold such other meetings as from time-to-time shall be called in the manner and form required by law, including the provisions of the Irvine Sunshine Ordinance.

B. The meetings of the Planning Commission shall be subject to and governed by the rules and regulations for commissions and committees set forth in Chapter 2 of Division 4 of Title 1 of the Code.

SECTION 8. Chapter 9 of Division 3 of Title 6 (Transportation Commission) is amended as follows and shall in all other respects remain in full force and effect:

Sec. 6-3-906. - Meetings and procedures.

A. The Transportation Commission shall meet regularly twice per month on a day and place to be fixed by the City Council, and shall hold such other meetings
as from time-to-time as called in the manner and form required by law, including the provisions of the Irvine Sunshine Ordinance.

B. The meetings and procedures of the Transportation Commission shall be subject to and governed by the rules and regulations for commissions and committees set forth in Chapter 2 of Division 4 of Title 1 of the Code, as well as any bylaws which are approved by the City Council.

SECTION 9. CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(3) and 15378, in that it can be seen with certainty that the Municipal Code amendments propose no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 10: This Ordinance shall become effective as to the City Council, the Irvine Planning Commission, and the Irvine Transportation Commission thirty (30) days after adoption, and shall become effective as to the Irvine Finance Commission and the Irvine Community Services Commission on January 30, 2019.

SECTION 11: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 12. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 13th day of November, 2018.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

CC ORDINANCE NO. 18-10
STATE OF CALIFORNIA  
COUNTY OF ORANGE    ) SS
CITY OF IRVINE       

I, MOLLY MCLAUGHLIN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the 23rd day of October, 2018, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 13th day of November, 2018.

AYES:  5  COUNCILMEMBERS:  Fox, Lalloway, Schott, Shea, and Wagner
NOES:  0  COUNCILMEMBERS:  None
ABSENT:  0  COUNCILMEMBERS:  None
ABSTAIN:  0  COUNCILMEMBERS:  None

[Signature]
CITY CLERK OF THE CITY OF IRVINE

18   CC ORDINANCE NO. 18-10
APPENDIX B

2017 Conflict of Interest Book
2017 Conflicts of Interest HANDBOOK
Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

› Updated including changes effective January 1, 2017
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INTRODUCTION

This Handbook is prepared to provide you with a summary of the major provisions of California’s principal conflicts of interest laws and regulations. The text of the laws and regulations referenced in this Handbook can be found on the websites for the California Legislature (http://leginfo.legislature.ca.gov/faces/codes.xhtml) and the Fair Political Practices Commission (“FPPC”) (http://www.fppc.ca.gov/the-law.html).

This Handbook is designed to familiarize city officials and staff with California’s principal conflicts of interest laws and regulations. Because the laws and regulations change frequently, we recommend that you use this Handbook to become familiar with the basic principles of the conflict laws and regulations, but we also recommend that you contact your City Attorney as soon as you think that you may have a potential conflict of interest. We would be glad to help you analyze a potential conflict of interest and/or contact the FPPC for guidance.

We hope you find this Handbook useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact us.

Richards, Watson & Gershon
Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations
Summary of the Major Provisions
and Requirements of Principal Conflicts of
Interest Laws and Regulations

I. LAWS AND REGULATIONS AFFECTING
DECISION-MAKING

A. The Political Reform Act

In 1974, California voters approved Proposition 9, a statewide initiative titled “the
Political Reform Act” (the “Act” or the “PRA”). Gov’t Code § 81000 et seq. At the
time, the measure was the most detailed disclosure law in the nation, and it included
new requirements for reporting campaign and lobbying activities. Although the Act
was initially written before the Watergate scandal broke, by the time Proposition 9
appeared on the ballot the drama had unfolded, and nationwide reform proposals
were being drafted.

The Act passed by an overwhelming majority, and one of its provisions created a new
state agency called the Fair Political Practices Commission (“FPPC”). The FPPC was
charged with interpreting and enforcing the Act, and pursuant to this authority, the
agency drafted a series of regulations. Since the Act went into effect in 1975, the FPPC
has issued new regulations and amendments to existing regulations almost every year.
The Act covers numerous topics germane to ethical behavior in public office—financial
data reporting obligations, lobbying restrictions, required campaign disclosures,
limitations on campaign financing, proscriptions on mass mailings, restrictions on gifts
and honoraria, and most significantly, prohibitions on conflicts of interest in the making
of governmental decisions. The Act also contains reporting procedures for financial
interests and campaign contributions, as well as disqualification requirements when
certain financial interests or campaign contribution standards are satisfied.

Please note that this Handbook is general in nature and may not cover all aspects of an
actual conflicts of interest issue. Thus, it is not intended to constitute advice on specific
conflicts of interest questions. In the event you have concerns about a possible conflict
of interest, you should contact your city attorney or agency counsel for further advice.

1 All statutory references are to the California Government Code unless otherwise indicated. Regulations of the FPPC are
referred to as “Regulation.”
1. Disclosure Requirements under the Political Reform Act

a. Statements of Economic Interests

The Act requires public officials to disclose assets and income that may be materially affected by their official actions by filing a “Statement of Economic Interests” (also known as a "Form 700"). § 87202; Regulation 18115. The requirement applies to council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. § 87200.

Officials must file the Form 700 within 30 days after assuming office, and candidates must file no later than the final filing date of a declaration of candidacy. §§ 87201-02. An official must file annually thereafter until he or she leaves office, at which point he or she must file a final statement. §§ 87202-03. The required disclosures on the Form 700 include:

- Investments in business entities (e.g., stock holdings, owning a business, a partnership) that are located or do business in the jurisdiction;
- Interests in real estate (real property) in the jurisdiction, but not including the official’s home address;
- Sources of personal income, including gifts, loans and travel payments; and
- Positions of management or employment with business entities that do business in the jurisdiction.

§ 87203. If the official no longer holds certain investments and real property interests at the time of filing, but held them during the 12 months prior to filing, he or she must still disclose those interests on the Form 700. Id. The Form 700 is a public document open to inspection and duplication.

For public officials not covered by the requirements of Section 87203, including employees of state and local government agencies, it is up to the agencies that employ them to decide what their disclosure requirements are. Each state and local agency must adopt a conflicts of interest code tailoring the disclosure requirements for each position within the agency to the types of governmental decisions a person holding that position would make. For example, an employee who approves contracts for goods or services purchased by his or her agency would not be required to disclose

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2 In some instances, an official may need to disclose the sources of income to a business entity in which the official has an ownership interest if the official owns at least 10 percent of a business. In that case, the official would be required to disclose a source of income to the business as a source of income to the official if the official’s pro rata share of gross receipts from that source exceeds $10,000 in aggregate during the reporting period. § 87207(b). In those cases, the official must report the name, address, and a general description of the business activity of the business entity, as well as the name of the source of income that aggregates to $10,000 or more.

3 As of January 1, 2016, if an official receives a gift that is a travel payment, advance, or reimbursement valued at $50 or more, the official must also disclose the travel destination. § 87207(a)(4).
real estate interests, but would be required to disclose investments in and income from individuals and entities that supply equipment, materials, or services to the agency. §§ 87301-02.

A city that maintains an internet website must post a list of the elected officers who file a Form 700 with that city. A statement must also be posted on the website indicating that these Form 700s may be obtained by visiting the FPPC office or the city clerk’s office. The statement must include the physical address for both the FPPC and the city clerk’s office. Finally, a link to the FPPC website must be posted with a statement that indicates that Form 700 “for some state and local government agency elected officers may be available in electronic format” on the FPPC’s internet website. § 87505.

In 2013, the Legislature enacted Assembly Bill 409, which allows the FPPC and local agencies to develop an online system for filing Form 700s. Only a limited number of public agencies have received FPPC approval to establish an electronic filing system at this point. If a local agency elects to establish such a system, filers must submit their Form 700 electronically. § 87500.2

b. **Behested Contributions**

There are also disclosure requirements for certain fundraising activities that elected officials perform for others. Elected officials who successfully solicit one or more contributions for “legislative, governmental, or charitable purposes” that equal or exceed $5,000 in the aggregate from the same source during a single calendar year must file a report with the official’s agency (typically the city clerk) within 30 days of reaching the $5,000 threshold. § 82015(b)(2)(B)(iii). The report must contain the following information:

- The contributor’s name and address;
- The amount of the contribution;
- The date or dates on which the payments were made;
- The name and address of the contribution recipient;
- If goods or services were contributed, a description of those goods and services; and
- A description of the purpose or event for which the contribution was used.

The statute does not define the term “legislative, governmental, or charitable purposes,” but charitable purposes typically involve 501(c)(3) organizations. Examples of “governmental” purposes include fundraising for a new city hall roof, an inaugural celebration committee,\(^4\) litigation expenses,\(^5\) a breakfast honoring public safety

personnel,\(^6\) and youth conferences.\(^7\) The term “legislative purpose,” in turn, refers to a 1996 FPPC opinion in which a state senator asked a private party to pay for a witness' airfare and expenses to testify at a legislative hearing.\(^8\)

These reporting requirements also apply if the payment is “made at the behest of” the elected officer, even if the officer did not actively solicit contributions. The reporting requirement therefore applies when a fundraising solicitation “features” the elected officer, meaning the “item mailed includes the elected officer’s photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.” Regulation 18215.3.

This disclosure requirement does not apply to a behested payment made by a local, state, or federal governmental agency for a principally legislative or governmental purpose. § 82015(b)(2)(B)(ii).

2. Conflicts of Interest under the Political Reform Act

In addition to the disclosure requirements, the Act requires public officials to disqualify themselves from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. § 87100; Regulation 18700. An official has a disqualifying financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, directly on the official or a member of the official’s immediate family, or on certain listed financial interests. The listed financial interests are:

- Any business entity in which the public official has a direct or indirect investment worth $2,000 or more.
- Any real property in which the public official has a direct or indirect interest worth $2,000 or more.
- Any source of income, including commission income or incentive income, aggregating to at least $500 within 12 months prior to the time when the decision is made. The $500 must be provided or promised to, or received by, the official during the 12 months before the decision.
- Any business entity (excluding nonprofit corporations) in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $470 or more in value provided to, received by, or promised


3. The FPPC’s Test for Analyzing Conflicts of Interest

In the past few years, the FPPC has reorganized the conflict of interest regulations and revised the conflict of interest regulations in a comprehensive manner. Under the old regulations, a public official was advised to follow an eight-part test to analyze a potential conflict of interest. The newly revised regulations establish a new four-part test, as stated in Regulation 18700(d).

The new FPPC four-part test assumes that an official already has determined whether he or she is a public official within the meaning of the Act. The new test also assumes that the official has identified the financial interests that may be affected by a particular governmental decision. Since these two steps are necessary for a complete analysis, we recommend that public officials follow the six steps described below, which incorporate these two initial steps as well as the FPPC’s new four-part test.

**STEP ONE: IS A PUBLIC OFFICIAL INVOLVED?**

*Determine whether the individual is a public official within the meaning of the Act.*

The Act applies only to “public officials.” Regulation 18700(b). A “public official” is defined to include a “member, officer, employee, or consultant” of a state or local government agency. § 82048; Regulation 18700(c). The regulations define “member” and “consultant” as follows:

- A “member” does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decision-making authority. A board or commission possesses decision-making authority if: (i) it may make a final governmental decision, (ii) it may compel or prevent a governmental decision by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden, or (iii) it makes substantive recommendations, which, over an extended period of time, have been regularly approved without significant amendment or modification by another official or agency. Regulation 18700(c)(2).
A “consultant”\textsuperscript{9} includes an individual who, pursuant to a contract with a state or local government agency, makes specific kinds of governmental decisions or serves in a staff capacity with the agency and either participates in governmental decisions or performs the same or substantially all of the same duties that would otherwise be performed by a person in a position listed in the agency’s conflict of interest code. Regulation 18700.3.

\textbf{STEP TWO: WHAT ARE THE PUBLIC OFFICIAL’S FINANCIAL INTERESTS?}

Identify the public official’s financial interests.

A public official’s financial interests include certain business entities, real property, sources of income, and donors of gifts (as well as intermediaries and agents of such donors). Regulation 18700(c)(6). More specifically, a public official has a financial interest in any of the following:

- A business entity in which the official has a direct or indirect investment worth at least $2,000. (Note: In certain situations, this can include a parent, subsidiary, or otherwise related business entity.)

- Any real property in which the public official has a direct or indirect interest worth at least $2,000. Real property interests include all leases except month-to-month leases and leases with terms shorter than a month. Regulation 18233.

- Any “source of income” of at least $500 that is provided or promised to the public official, or received by the public official within 12 months prior to a governmental decision, not including gifts and loans by banks available to the general public. Income is “promised to” the official if he or she has a “legally enforceable right to the promised income.” Regulation 18700(c)(6)(C). The term “source of income” may include individuals, organizations, and businesses. If the “source of income” is a business that provides or promises the official at least $500 within 12 months prior to a governmental decision, the official also has a source-of-income interest in: (1) any individual owning at least a 50 percent interest in that business, and (2) any individual who has the power to direct or cause the direction of management and policies of the business. Regulation 18700.1(a)(2).

\textsuperscript{9} For more on who constitutes a “consultant” subject to the Act, see, e.g., Ennis Advice Letter, FPPC No. A-15-006 (2015).
• Any business entity in which the public official is a director, officer, partner, trustee, or employee, or holds any position of management. (Note: Again, this may include a parent, subsidiary, or otherwise related businesses entity.)

• Any donor of gifts, or any intermediary or agent for a donor of gifts, amounting to at least $470 where that amount is provided to, received by, or promised to the official in the 12 months prior to a governmental decision. Regulation 18700(c)(6)(E).

• The personal finances of the public official and immediate family. This is a sort of “catch-all” provision that is meant to address economic interests of a public official and his or her immediate family that do not qualify as investments, property, or business entities, but are nonetheless potentially affected by government decisions.

§§ 82047, 87103; Regulations 18700, 18940.2. The terms “indirect investment” and “indirect interest” are used to indicate investments and interests owned by the spouse or dependent child of the public official, an agent of the public official, or a business entity in which the official, or his or her agent’s spouse, or dependent children, has at least a ten percent ownership interest. Regulation 18700(c)(6)(F).

STEP THREE: IS IT REASONABLY FORESEEABLE THAT THE GOVERNMENTAL DECISION WILL HAVE A FINANCIAL EFFECT ON ANY OF THE OFFICIAL’S FINANCIAL INTERESTS?

Determine whether the governmental decision will have a reasonably foreseeable financial effect on any of the official’s financial interests.

Regulation 18701 draws a distinction between a financial interest that is “explicitly involved” in a decision, on the one hand, and a financial interest that is not “explicitly involved” in a decision, on the other hand.

Financial interests are considered to be explicitly involved in a decision if the interest is a “named party in, or the subject of, a governmental decision before the official or the official’s agency.” Regulation 18701(a). A financial interest is the “subject” of a proceeding “if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with the financial
interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1) – (6).” Regulation 18701(a). In those cases, the financial effect is presumed to be reasonably foreseeable.

Even if a financial interest is not explicitly involved in a decision, the effect may still be considered reasonably foreseeable. Regulation 18701 states that a financial effect need not be “likely” to be considered “reasonably foreseeable” for purposes of the FPPC’s regulations. If the financial effect can be “recognized as a realistic possibility” and if the effect is “more than hypothetical or theoretical,” it will be considered reasonably foreseeable. Regulation 18701(b). The financial effect will not be considered reasonably foreseeable if the “the financial result cannot be expected absent extraordinary circumstances” that are not subject to the official’s control.

The FPPC also provides the following list of non-exclusive factors that should be considered when determining whether a governmental decision will have a reasonably foreseeable effect on a financial interest that is not explicitly involved in the decision:

- The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency.
- Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.
- Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.
- Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official’s financial interest might compromise a public official’s ability to act in a manner consistent with his or her duty to act in the best interests of the public.
- Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official’s financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.
- Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position.
Possession of a real estate, brokerage license, or other professional license does not automatically constitute a reasonably foreseeable effect on the official’s financial interest. Regulation 18701.1. The official’s likely business activity must be considered to determine whether the governmental decision will have a reasonably foreseeable effect on one of the official’s financial interests.

If it is not reasonably foreseeable that the governmental decision will have a financial effect on any of the official’s financial interests, there is no conflict under the Act. If it is determined that it is reasonably foreseeable that the governmental decision will have a financial effect, however, the official must determine whether the effect is material.

**STEP FOUR: WILL THE REASONABLY FORESEEABLE EFFECT BE MATERIAL?**

Determine whether the reasonably foreseeable financial effect will be material.

If the effect is “nominal, inconsequential, or insignificant,” the financial effect will not be considered material. Regulation 18702(b). Otherwise, however, the provisions in Regulations 18702.1 through 18702.5 determine – for each type of financial interest – whether the effect is material. Regulation 18702(a).

a. **Business Entities**

Regulation 18702.1 provides that the reasonably foreseeable effect of a decision on a business entity in which the official has an investment interest or holds an employment or management position is material whenever the business entity:

- Initiates the proceeding in which the governmental decision will be made by filing an application, claim, appeal, or request for other government action concerning the business entity;
- Offers to make a sale of a service or a product to the official's agency;
- Bids on or enters into a written contract with the official's agency;
- Is the named manufacturer in a purchase order of any product purchased by the official’s agency or the sales provider of any products to the official’s agency that aggregates to $1,000 or more in any 12-month period;
- Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement that the official’s agency is authorized to issue;
• Is the subject of any inspection, action, or proceeding subject to the regulatory authority of the official’s agency; or

• Is otherwise subject to an action taken by the official’s agency, the effect of which is directed solely at the business entity in which the official has an interest.

For government decisions that are not specifically identified in the list above, the financial effect is material if it falls under the catch-all provision. In those instances, the effect is material if “a prudent person with sufficient information would find it is reasonably foreseeable that the decision’s financial effect would contribute to a change in the price of the business entity’s publicly traded stock, or the value of a privately-held business entity.” Regulation 18702.1(b). Regulation 18702.1(b) includes a list of examples of these types of decisions, including when an agency makes a decision to:

• Authorize, prohibit, regulate or otherwise establish conditions for an activity in which the business entity is engaged;

• Increase or decrease the amount of competition in the field in which the business entity is engaged;

• Increase or decrease the need for the products or services that the business entity supplies;

• Make improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the business entity receives;

• Decide the location of a major development, entertainment facility, or other project that would increase or decrease the amount of business the entity draws from the location of the project; or

• Increase or decrease the tax burden, debt, or financial or legal liability of the business entity.

These materiality standards replace the previous materiality standards that determined materiality based on the size and type of the business entity.

b. Real Property – Modified “500-Foot Rule” and Other Criteria

The new regulatory scheme largely replaces the traditional “500-foot” rule with an extensive list of criteria that must be analyzed to determine whether a decision will have a material financial effect on an official’s real property interest. Regulation 18702.2. There are now twelve materiality standards that must be evaluated when an official has an ownership interest in real property, and five materiality standards that must be evaluated when an official has a leasehold interest in real property.
Regulation 18702.2 now provides that the reasonably foreseeable financial effect of a governmental decision on an official’s real property economic interest, other than a leasehold interest, is material whenever the governmental decision:

- Involves the adoption of or amendment to a general or specific plan, and the parcel is located within the proposed boundaries of the plan;

- Determines the parcel’s zoning or rezoning (other than a zoning decision applicable to all properties designated in that category), annexation or de-annexation, or inclusion in or exclusion from any city, county, district, or other local government subdivision, or other boundaries, other than elective district boundaries as determined by the California Citizen’s Redistricting Commission or any other agency where the governmental decision is to determine boundaries for elective purposes;

- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel;

- Authorizes the sale, purchase, or lease of the parcel;

- Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, that real property;

- Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official’s jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision;

- Would change the development potential of the parcel of real property;

- Would change the income producing potential of the parcel of real property;

- Would change the highest and best use of the parcel of real property in which the official has a financial interest;

- Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;
• Would consider any decision affecting real property value located within 500 feet of the property line of the official’s real property; or

• Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.

As noted above, Regulation 18702.2(a)(11) includes a modified version of the old “500-foot rule” whereby the effect on an ownership interest in real property will be considered material if the decision affects real property value within 500 feet of the official’s property. Nonetheless, the official may request a decision from the FPPC to allow the official to participate, even if the decision affects property value within 500 feet, if the FPPC finds that “there will be no reasonably foreseeable measurable impact on the official’s property.”

The FPPC has relaxed the rules with respect to real property economic interests that stem from having an ownership interest in the common area of a common interest development. Previously, in addition to evaluating whether the decision concerned a project located within 500 feet of the public official’s real property, it was necessary to evaluate whether the decision was within 500 feet of any homeowner association common area in which the official had an ownership interest. Now, Regulation 18702.2 excludes common areas in common interest developments from the definition of “real property” for the purpose of conducting a conflict of interest analysis. Thus, the proximity of homeowner association common areas to a project is no longer a factor in the conflict of interest analysis.

With respect to an official’s leasehold interests, Regulation 18702.2(b) now provides that the reasonably foreseeable financial effect of a governmental decision on an official’s real property economic interest is material whenever the governmental decision will:

• Change the termination date of the lease;

• Increase or decrease the potential rental value of the property;

• Increase or decrease the rental value of the property, and the official has a right to sublease the property;

• Change the official’s actual or legally allowable use of the real property;

• Impact the official’s use and enjoyment of the real property.

There are a few exceptions by which the effect of a decision on an official’s real property interest will not be considered material. The following decisions will not be considered to have a material effect on an official’s real property interest:

• The decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities.
• The decision solely concerns the adoption or amendment of a general plan and all of the following apply:

✓ The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is a financial interest to the public official, or by a person representing either the public official or a financial interest to the public official.

✓ The decision requires a further decision or decisions by the public official’s agency before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

✓ The decision does not concern an identifiable parcel or parcels or development project. A decision does not “concern an identifiable parcel or parcels” solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency’s jurisdiction and the economic interests of the official are not singled out.

✓ The decision does not concern the agency’s prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

These rules replace the old “500-foot rule” that applied before 2014. Of special interest to many local public officials, these provisions appear to allow public officials to participate in most decisions relating to slurry sealing, asphalt paving, curb and sidewalk repairs, or tree replacement, even if the work occurs within 500 feet of their property, due to the exception for repairs and replacement of existing infrastructure.

c. Sources of Income

The FPPC regulations also provide materiality standards for sources of income. Regulation 18702.3. A “source of income,” as discussed above, is any person from whom a public official has received at least $500 in the twelve months prior to the relevant governmental decision. Regulation 18700.1. A “person” includes individuals, organizations, and business entities. § 82047.

The regulations provide that any reasonably foreseeable financial effect on an individual, organization, or business entity that is a source of income to an official is deemed material if the public official receives or is promised the income to achieve a
goal or purpose that would be achieved, defeated, aided, or hindered by the governmental decision. Regulation 18702.3(c).

In addition to this general standard, the regulations provide further guidance that separately analyzes a source of income depending on whether the income comes from the sale of goods or services or from the sale of personal or real property. Regulation 18702.3.

If the income is received from the sale of goods or services in the ordinary course of business, a financial effect on a source of income is material if:

- The source is a claimant, applicant, respondent, contracting party, or otherwise named or identified as the subject of the proceeding;
- The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5 (see Personal Finances below), or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively;
- The source is a nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.2 (see Real Property – Modified “500-Foot Rule” and Other Criteria above); or
- The source is a business entity that will be financially affected under the standards as applied to a financial interest in Regulation 18702.1 (see Business Entities above).

Regulation 18702.3(a). If the source of income is the “claimant, applicant, respondent, contracting party, or … otherwise named or identified as the subject of the proceeding,” the financial effect will be deemed material, regardless of whether the source of income is an individual, a nonprofit, or a business entity. If the source of income is not the “claimant, applicant, respondent, contracting party, or … otherwise named or identified as the subject of the proceeding,” the official will need to apply the other standards in Regulation 18702.3(a)(2) – (4), depending on whether the source of income is an individual, a nonprofit, or a business entity.

If the income is from the sale of personal or real property belonging to either the official or the official's spouse, if the property is community property, the materiality of the financial effect will be determined as follows:

... the financial effect of the decision is material if the official knows or has reason to know that the source of income is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding, or has an interest in any business entity or real
property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2.

Regulation 18702.3(b). The regulation also includes additional provisions to help officials who receive income from retail sales of a business entity in determining when a retail customer becomes a source of income. This new regulatory provision, which is intended to replace prior Regulation 18707.5, states:

(d) Exception – Income from Retail Sales of a Business Entity: For purposes of applying the exception under Section 87103.5, the retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public and the customers comprise a broad base of persons representative of the jurisdiction as a whole and not confined to any specialized interest. Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the general clientele of the business. An official is unable to recognize a significant monetary difference when either:

(1) The business is of the type that sales to any one customer will not have a significant impact on the business' annual net sales; or

(2) The business has no records that distinguish customers by amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer.

Regulation 18702.3(d). If you own 10 percent or more of a business entity that is engaged in the retail sale of goods or services, we recommend that you review this provision in order to determine whether individual retail customers will be considered sources of income to you for the purpose of analyzing conflicts under the Act.

d. Sources of Gifts

The FPPC regulations also provide materiality standards for sources of gifts. Regulation 18702.4. For the purpose of analyzing potential conflicts under the Political Reform Act, a donor becomes a “source of gifts” by providing a public official with gifts valued at $470 or more in the aggregate in the 12 months prior to a governmental decision. Regulations 18700(c)(6)(E), 18940.2. A person may also be a source of a gift by being an “intermediary or agent for a donor of” a similar gift. Regulation 18700(c)(6)(E).

Under the FPPC regulations, a financial effect on a source of a gift is material if:

- The source is a claimant, applicant, respondent, contracting party, or otherwise named or identified as the subject of the proceeding;
• The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5 (see Personal Finances below), or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively;

• The source is a nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.2 (see Real Property – Modified “500-Foot Rule” and Other Criteria above); or

• The source is a business entity that will be financially affected under the standards as applied to a financial interest in Regulation 18702.1 (see Business Entities above).

Regulation 18702.4. Like with sources of income, the analysis of materiality for sources of gifts may depend on whether the source is an individual, a nonprofit, or a business entity. If the source of a gift is the “claimant, applicant, respondent, contracting party, or … otherwise named or identified as the subject of the proceeding,” the financial effect will be deemed material, regardless of whether the source is an individual, a nonprofit, or a business entity. If the source of a gift is not the “claimant, applicant, respondent, contracting party, or … otherwise named or identified as the subject of the proceeding,” the official will need to apply the other standards in Regulation 18702.4(b) – (d), depending on whether the source of income is an individual, a nonprofit, or a business entity.

e. Personal Finances

Finally, the regulations provide materiality standards for effects on personal finances. Regulation 18702.5. A reasonably foreseeable financial effect on an official’s or his or her immediate family’s personal finances is considered material if the official or the official’s immediate family member will receive a measurable financial benefit or loss from the decision. Regulation 18702.5.

The following are not considered to be a material financial effect under Government Code Section 87103:

1) Any establishment of or change to benefits provided under an employment or retirement policy for employees or retirees if the financial effect of the decision applies equally to all employees in the same bargaining unit or other representative group.

2) Payment of any travel expenses, to the extent allowed by law, incurred while attending meetings as an authorized representative of an agency.

3) Stipends received for attendance at meetings of any group or body created by law or formed by the official’s agency for a special purpose, so long as the
selecting body posts on its website on a form provided by the Commission that includes: a list of each appointed position eligible for a stipend, the amount of the stipend for each position, the name of the public official who has been appointed to the position, the name of the public official, if any, who has been appointed as an alternate, and the term of the position.

4) The use of any government property, such as automobiles or other modes of transportation, mobile communication devices, or other agency provided equipment for carrying out the official duties of a position, including any nominal, incidental, negligible, or inconsequential personal use while on duty.

5) Any personal reward received by the official when using a personal charge card or membership rewards program, so long as the reward is no different from the reward offered to the public and is limited to charges made solely for the official’s approved travel expenses.

6) A decision to fill a position on the body of which the official is a member.

Regulation 18702.5(b). Any effect on the interests noted above would not constitute a material effect on personal finances for the purpose of the Political Reform Act.

Regulation 18702.5 clarifies that if a decision only affects a business entity or real property in which the official has a financial interest, the regulation regarding personal finances does not apply. Regulation 18702.5(c). Under those circumstances, the official should analyze the applicable materiality standards for those types of interests in Regulations 18702.1 and 18702.2 to determine whether a conflict exists.

**STEP FIVE: DOES THE “PUBLIC GENERALLY” EXCEPTION APPLY?**

Determine if the official can demonstrate that the material financial effect on the official’s interest is indistinguishable from the decision’s effect on the public generally.

Once it is determined that it is reasonably foreseeable that a decision will have a material financial effect on an official’s financial interest, it is necessary to evaluate whether an exception to the disqualification requirement is applicable. One exception, known as the “public generally” exception, provides that even if a governmental decision will have a reasonably foreseeable material financial effect on the official’s financial interest, disqualification will not be required if the effect on the public official’s financial interest is indistinguishable from the decision’s effect on the financial interests of the public generally. Regulation 18703.
In order to use this exception, the official must be able to demonstrate two core elements. First, the governmental decision must affect a “significant segment” of the public in the jurisdiction of the public agency. Second, the governmental decision’s effect on the official’s financial interest must not be unique as compared to the effect on the significant segment. Regulation 18703.

The FPPC has simplified the regulation to determine what constitutes a sufficiently “significant segment” of the public. Regulation 18703(b). A significant segment of the public is “at least 25 percent of” any of the following:

- All businesses or non-profit entities within the official’s jurisdiction;
- All real property, commercial real property, or residential real property within the official’s jurisdiction; or
- All individuals within the official’s jurisdiction.

Regulation 18703(b).

To determine whether a decision’s effect on the official’s financial interest is “unique” as compared to the effect on the significant segment of the public, the FPPC requires that an official determine whether the decision has a “disproportionate” effect on:

- The development potential or use of the official’s real property or on the income producing potential of the official’s real property or business entity.
- An official’s business entity or real property resulting from the proximity of a project that is the subject of a decision.
- An official’s interests in business entities or real properties resulting from the cumulative effect of the official’s multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.
- An official’s interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.
- A person’s income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.
- An official’s personal finances or those of his or her immediate family.

Regulation 18703(c).

The official’s “jurisdiction” for the purposes of this regulation constitutes the “jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official’s authority and duties are limited if not elected.” Regulation 18703(d). Real property is considered to be within a “jurisdiction” if the “property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.” § 82035.

The FPPC Regulations include a number of specialized “public generally” exceptions. Regulation 18703(e). The financial effect on an official’s financial interest is deemed indistinguishable from that of the public generally if the official establishes:

- The decision establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official’s interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate.

- The decision affects the official’s personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction.

- The decision affects residential real property limited to a specific location, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.

- The decision affects all renters of residential property within the official’s jurisdiction and only interests resulting from the official’s leasehold interest in his or her residence are affected.

- The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented and there is no unique effect on the official’s interest.

- The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency and there is no unique effect on the official’s interest.
The decision affects a federal, state, or local governmental entity in which the official has an interest and there is no unique effect on the official’s interest.

Regulation 18703(e).

**STEP SIX: MAY THE OFFICIAL MAKE OR PARTICIPATE IN MAKING A DECISION?**

Determine whether the public official will be making, participating in the making, or using or attempting to use his/her official position to influence a governmental decision.

The Act applies when a public official is “making, participating in making, or using or attempting to use his/her official position to influence a governmental decision.” Regulation 18704. If the official will be called upon to make, participate in making, or use his or her official position to influence a governmental decision in which the official has a financial interest, the official will have a prohibited conflict of interest. The FPPC regulations define each of these actions for purposes of applying the Act:

- A public official “makes” a governmental decision when the official, authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. Regulation 18704(a). 11

- A public official “participates in” a governmental decision when the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. Regulation 18704(b).

- A public official “uses his or her official position to influence” a decision if the official: (i) contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or (ii) contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within

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11 A public official’s “determination not to act” does not constitute participating in “making” a government decision when the public official is abstaining from a decision due to a personal financial interest.
his or her authority or on behalf of his or her agency in making the contact.

Regulation 18704(c).

There are limited exceptions to this rule. A public official is not making, participating in making, or influencing a government decision when the official acts in a solely ministerial, secretarial, or clerical manner. Regulation 18704(d)(1).

In addition, an official is not making, participating in making, or influencing a government decision when the official appears before the public agency as a member of the general public to represent specific and limited “personal interests” or when the official negotiates his or her compensation or terms of employment. Regulation 18704(d). With respect to negotiating the terms of employment, however, “an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or his or her immediate family, or set a salary for the official or his or her immediate family different from salaries paid to other employees of the government agency in the same job classification or position.” Regulation 18704(d)(3).

Making, participating in, or influencing a governmental decision also does not include communications to either the press or the general public. Regulation 18704(d)(4). Nor does it include academic decisions. Regulation 18704(d)(5). Limited actions in an official’s professional capacity as an architect or engineer also are not considered to be making, participating in, or influencing a governmental decision. Regulation 18705(d)(6). Finally, an official who serves as a consultant will not be participating in a decision by making a recommendation regarding additional services if the agency has already contracted with the consultant – for an agreed upon price – to make recommendations concerning services of the type offered by the consultant. Regulation 18704(d)(7).

**STEP SEVEN:** **IS THE PUBLIC OFFICIAL’S PARTICIPATION LEGALLY REQUIRED?**

Determine if the public official’s participation is legally required despite a conflict of interest.

A public official also is permitted to participate in making a governmental decision, despite having a conflict of interest in the decision, if no alternative source of decision exists that would be consistent with the purposes and terms of the statute authorizing the decision. Regulation 18700(e), 18705(a).
This exception is applied when a quorum of a legislative body cannot be convened due to the disqualifying conflicts of interests of its members. In that situation, as many members as are needed to create the minimum number for the quorum may be selected at random to participate. In these situations, stringent disclosure requirements apply, not only regarding the basis of the selected member’s conflict of interest, but also the reason why there is no alternative source of decision-making authority. Regulation 18705(b). For the purposes of this section, a “quorum” means “the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item, the “quorum” shall be that minimum number of members needed for that adoption.” Regulation 18705(d).

Note that this rule is construed narrowly and may not be invoked to permit an official who is otherwise disqualified to vote to break a tie or to vote if a quorum can be convened of other members of the agency who are not disqualified, whether or not such other members are actually present at the time of the decision. Regulation 18705(c).

4. Abstention

When a public official has a conflict of interest under the Act, he or she is required to abstain from making, participating in making, or using or attempting to use his or her official position to influence the local agency’s decision. Abstention avoids a violation of the conflict of interest provisions of the Act.

The Act establishes specific procedures that most public officials must follow when they have a conflict of interest and are required to abstain from a decision. § 87105; Regulation 18707. Immediately prior to the consideration of the matter, the official must: (i) identify each 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, or the official is speaking as a member of the public regarding an applicable personal interest. § 87105; Regulations 18707, 18704(d)(2). The FPPC recently clarified the procedure required and precise information that must be disclosed, as described in new Regulation 18707. This includes additional information regarding rules for closed sessions and matters on the consent calendar.

The procedure stated in Regulation 18707(a) must be followed by all council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counselors, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. §§ 87105, 87200. The Act does not require other public officials who must file financial disclosure forms under local conflict of interest codes to follow the same procedure, but the FPPC has now prescribed specific rules for those public officials. Regulation 18707(b).
Depending on the nature of his or her interest, a public official who must abstain from a decision may comment on the item as a member of the public during the public comment period on a matter related to his or her “personal interests.” The term “personal interest” is defined to include an interest in real property or a business entity that is wholly owned by the official or his or her immediate family. Regulations 18704(d)(2)(A) and (B). It also includes business entities over which the official, or the official and his or her immediate family, exercise sole direction and control. Regulation 18704(d)(2)(C).

If a public official wishes to speak on a matter related to his or her “personal interests,” the official must publicly identify the financial interest (including all of the specific details required by the regulation). Regulation 18707(a)(1)(A). The public identification must be made orally and be included in the official public record. Regulation 18707(a)(1)(B). Subsequently, the official must recuse himself or herself and leave the dais to speak from the same area as the members of the public. Regulation 18707(a)(3)(C). Like other members of the public, the official may listen to the comments of other speakers on the matter. Regulation 18704(a)(3)(C).

Note that when a public official abstains from a decision, his or her presence does not count toward achieving a quorum. Regulation 18707. Accordingly, if several officials must abstain from a decision under the Political Reform Act, there may not be sufficient members of the body present to consider a matter under the Brown Act. In such a circumstance, it may be possible to use the exception for legally required participation, as discussed above.

5. Penalties for Violation

Administrative, civil and criminal penalties exist for violation of the conflict of interest provisions of the Act. The FPPC may levy administrative penalties after a hearing and may impose a fine of up to $5,000 per violation, a cease and desist order, and an order to file reports. § 83116. Civil penalties include injunctive relief that may be sought by the district attorney or any person residing in the jurisdiction. § 91003. In the event a court finds that the actions would not have been taken but for the action of the official with the conflict of interest, the court is empowered to void the decision. § 91003. Misdemeanor criminal penalties are provided in situations where a knowing or willful violation of the act occurs, and generally, persons convicted of violating the Act may not be a candidate for elective office or act as a lobbyist for four years after the conviction. §§ 91000, 91002. The statute of limitations for civil and criminal enforcement actions is four years from the date of the violation. §§ 91000(c), 91011(b). The statute of limitations for administrative actions brought by the FPPC is five years from the date of the violation. § 91000.5.

6. Seeking Advice on Conflict of Interest Questions

It is important to note that only a formal advice letter from the FPPC staff can immunize a public official from potential enforcement by the FPPC or the District Attorney in the event the public official participates in a decision and someone subsequently alleges the public official had a prohibited conflict of interest. A formal advice letter usually
takes the FPPC staff at least a month to prepare, is only provided if the request relates to prospective acts (as distinguished from past acts), and if it contains sufficient facts upon which the FPPC is able to render a decision. Informal written advice (without immunity from potential enforcement action) may also be requested from the FPPC staff as well as informal telephonic advice through their technical assistance division at 1 866 ASK FPPC (1 866 275 3772). Based on the time frames required to obtain formal or informal written advice from the FPPC, it is important for public officials to consult their city attorney or local agency counsel as early as possible so as to provide adequate time to gather all relevant facts, draft a letter to the FPPC, and respond to the advice once given.

B. Government Code Section 1090

Government Code Section 1090 provides in relevant part: “[m]embers 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 purpose of the prohibition contained in Section 1090 is to preclude a public official from using his or her position to obtain business or financial advantage through the approval of contracts by the public entities which he or she serves. As more fully explained below, the prohibition applies not only to preclude a member of the body or board that approves the contract from directly contracting with that same public entity, but it also applies when the public official has a financial or other specified relationship to the entity that seeks to contract with the public entity. The intent of the law is to remove the possibility of any personal influence that might bear on an official’s decision-making activities on contracts executed by his or her public entity.

Both the Act and the common law (meaning court-made) doctrine against conflicts of interest require the public official with a conflict of interest to abstain from participation in the decision. Section 1090, by contrast, also prohibits the public entity from entering into a contract in which one of its officers or employees has a financial interest, unless certain exceptions apply.

If the conflicted official is a member of a board or commission that executes the contract, he or she is conclusively presumed to be involved in the making of his or her agency’s contracts. Thomson v. Call, 38 Cal. 3d at 649. This absolute prohibition applies regardless of whether the contract is found to be fair and equitable or the official abandons from all participation in the decision. Thomson, 38 Cal. 3d at 649-50; Fraser-Yamar Agency, 68 Cal. App. 3d at 211-12; City of Imperial Beach, 103 Cal. App. 3d at 195. The only way a public entity could still enter into such a contract – i.e., in which an official has a financial interest – would be if that interest qualifies as a “remote interest” or “non-interest” within the meaning of specified provisions discussed below.

1. Three Principal Components of Section 1090

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

a. Officer or Employee of Listed Government Entity

The first element is whether the person subject to the prohibition is a member of the Legislature or an officer or employee of the state, a county, a district, a judicial district, or a city. Virtually every officer or employee of a municipality or local governmental district is subject to the prohibition of Section 1090.

In recent years, the courts have concluded that consultants may be considered “employees” for the purpose of civil liability under Section 1090 if they have the potential to exert considerable influence over the agency’s contracting decisions. California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc., 148 Cal. App. 4th 682, 691 (2007); see also, Hub City Solid Waste Services, Inc. v. City of Compton, 186 Cal. App. 4th 1114, 1124-1125 (2010). Moreover, the courts have held that even private companies may be subject to Section 1090 where the company has the potential to exert considerable influence over the agency’s contracting decision. Davis v. Fresno Unified School District, 237 Cal. App. 4th 261 (2015); McGee v. Balfour Beatty Construction, LLC, 247 Cal. App. 4th 235, 261 (2016).

As such, we advise that both public agencies and independent contractors carefully evaluate whether their duties and obligations potentially allow them to influence the agency’s contracting decisions. If so, their involvement in those contracting decisions must be evaluated for compliance with Section 1090.
b. **Financial Interest in a Contract**

The second element of the prohibition is the existence of a direct or indirect financial interest in a contract. The courts have interpreted the term "financially interested" as including 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. *Thomson v. Call*, 38 Cal. 3d 633 (1985). The courts have also interpreted "financially interested" as including indirect financial interests in a contract, where, for example, a public official has a business relationship with the entity that would be contracting with the public entity, or when the public official would gain something financially by the making of the contract. *Fraser-Yamor Agency*, 68 Cal. App. 3d 201 (1977); *Finnegan v. Schrader*, 91 Cal. App. 4th 572, 579 (2001). In *Thomson v. Call*, the California Supreme Court described the breadth of the statute this way:

"Section 1090 forbids city officers . . . from being 'financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.' The proscribed interest certainly includes any direct interest, such as that involved when an officer enters directly into a contract with the body of which he is a member. California courts have also consistently voided such contracts where the public officer was found to have an indirect interest therein. . . . Neither the absence of actual fraud nor the possibility of a 'good faith' mistake on [the officer's] part can affect the conclusion that this contract violates section 1090 and is therefore void."

38 Cal. 3d at 645-46 (citations omitted) (emphasis added).

In *Thomson*, a council member sold certain real property to a third party, knowing that the city was negotiating a deal to acquire multiple parcels of property in that area for a public park. The third party then conveyed the councilman’s property to the city, in an apparent attempt to evade the provisions of Section 1090. The court essentially "unwound" and invalidated the entire transaction based on the council member’s interest in the transaction. The court refused to focus on the isolated contract between the city and the third-party that bought the property from the council member, but rather viewed all of the successive contracts as one complex multi-party agreement. The court ordered the council member to disgorge all funds he received in the transaction and ordered that the city retain title to the property. The court noted that this type of severe remedy was necessary to discourage violations of Section 1090.

Other decisions have followed this same broad reading of "indirect interests." In *People v. Vallerga*, the California Court of Appeal summarized court decisions addressing financial interests under Section 1090 as follows: "However devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void." 67 Cal. App. 3d 847, 867 (1977); see also *People v. Honig*, 48 Cal. App. 4th 289, 315 (1996) (stating the same rule). The scope of indirect interests that could form a "devious and winding chain" back to a public contract is broad, but this reflects the judicial stance of vigilant enforcement of Section 1090. See, e.g., Thomson, 38 Cal. 3d at 652 ("[T]he policy of strict enforcement
of conflict-of-interest statutes . . . provides a strong disincentive for those officers who might be tempted to take personal advantage of their public offices, and it is a bright-line remedy which may be appropriate in many different factual situations.”); Berka v. Woodward, 125 Cal. 119, 128 (1899) (noting the need for “strict enforcement” of the conflict of interest statutes).

Although Section 1090 traditionally has been interpreted broadly, a recent California appellate decision warned against an overly broad interpretation of the term “financial interest” for the purpose of Section 1090. See Eden Township Healthcare District v. Sutter Health, 202 Cal. App. 4th 208, 228 (2011). The court acknowledged the general principle that the “defining characteristic of a prohibited financial interest is whether it has the potential to divide an official’s loyalties and compromise the undivided representation of the public interest the official is charged with protecting.” Id. at 221. The court concluded that the salaried CEO of a non-profit medical center, who also served on the board of a hospital district, was not financially interested in contracts between the medical center and the hospital district, despite the clear potential effect on his employer. Id. at 222. The court noted that there was “nothing in the record to support the inference that the [agreements] bear any relationship to [the CEO’s] continued employment” with the medical center. Id. at 223-224. Moreover, the court noted that there was “no evidence that [the CEO would] derive any financial benefit arising from the” agreements in question. Id. at 226. The court stated broadly:

In our view, if the contract itself offers no benefit to the official, either directly or indirectly, then the official is not financially interested in the contract and any explicit legislative exemption for such a circumstance would be unnecessarily redundant.

Id. at 228. The court distinguished the case of Miller v. City of Martinez, 28 Cal. App. 2d 364 (1938), in which the complaint alleged that a council member had a financial interest in a contract with a company that employed him and in which he also held stock. Id. at 226.

The ruling in Eden Township could be construed to suggest that an official is only “financially interested” in a contract that affects the official’s compensation or continued employment. In light of subsequent FPPC advice letters, however, there is continued uncertainty regarding the application and interpretation of the court’s holding in Eden Township. As such, we recommend that public officials seek legal assistance whenever a potential Section 1090 conflict arises.

In addition to a “financial interest,” there must be a contract in order for Section 1090 to apply, as described below. General contract principles apply to this determination and include such arrangements as purchase and service contracts as well as development agreements between a city and a developer (78 Ops. Cal. Att’y Gen. 230 (1995)); 82

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c. A Contract “Made” by the Official or by a Body or Board of which the Official Is a Member

The third element necessary for a Section 1090 violation is that the contract has to be “made” either by the official or employee acting in his or her official capacity, or by any body or board of which the official is a member. The “making” of a contract is most commonly implicated by a city council’s approval of a simple purchase order as part of the approval of a demand warrant registrar; this is likely to constitute the making of a contract within the scope of Section 1090. The courts have construed the term “made” as encompassing such elements in the formation of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, and drawing of plans or specifications and solicitation for bids. Millbrae Ass’n for Residential Survival v. City of Millbrae, 262 Cal. App. 2d 222, 237 (1968). For example, in City Council of San Diego v. McKinley, 80 Cal. App. 3d 204, 212 (1978), a court of appeal found a Section 1090 violation when a city council entered into an agreement with a landscape architectural firm, of which the president, a stockholder, was also a member of the city’s parks and recreation board. The board investigated and advised the city council on parks and recreation development issues, and it approved plans for a Japanese garden for which the board member’s company ultimately received the development contract. Even though the board member was not a member of the city council, which awarded the contract to his company, the board member’s participation in the planning for the garden was sufficient to constitute participation in “making” the contract:

“[T]here is ample authority the negotiations, discussions, reasoning, planning, and give and take which go beforehand in the making of a decision to commit oneself must all be deemed to be a part of the making of an agreement in the broad sense. [Citation omitted.] Thus, the final execution of a contract, which is the time when the contract is technically made, is not the only time when a conflict of interest may be presented.”

80 Cal. App. 3d at 212.

Similarly, in Stigall v. City of Taft, 58 Cal. 2d 565, 569-70 (1962), the California Supreme Court held that an impermissible conflict existed in a contract with a plumbing company owned by a council member, even though the council member resigned before the plumbing company’s bid was accepted. The court recognized that activities prior to the signing of a contract can be integral to the decision to accept the contract. Id. at 569; see also Campagna v. City of Sanger, 42 Cal. App. 4th 533, 538 (1996).
2. Exceptions to Section 1090

a. “Remote Interest” Exception

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 the local agency may enter into the contract as long as the official abstains from participating in the decision in any way. Although this is not an exhaustive list of the “remote interest” exceptions, a few examples of “remote interest” exceptions include the following:

- Remote interest exception for a compensated officer or employee of a nonprofit corporation (Section 1091 (b)(1));

- Remote interest exception for a person receiving a government salary, per diem, or reimbursement for expenses, even when the contract involves the department of the government entity that employs the board member (Section 1091 (b)(13)); and

- Remote interest exception for a litigation settlement agreement between an officer that is party to litigation involving the body or board of which the officer is a member (Section 1091 (b)(15)).

- Remote interest exception for the owner or partner of a firm who serves as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from: (1) providing any advice to the contracting agency regarding the contract between the firm and the contracting agency; and (2) any participation in reviewing a project that results from that contract (Section 1091 (b)(17)).

The “remote interest” exception applies only if the interest is disclosed to the body that approves the contract, the disclosure is noted in that body’s official records, and the official abstains from voting. Further, members with a “remote interest” may not attempt to influence any other member of the body or board of which they are members to enter into the contract.
b. **“Non-Interest” Exception**

The second category of exceptions is found in Section 1091.5. These are called “non-interest” exceptions and apply to a type of interest that is completely exempt from Section 1090 and, if held by the official, does not require abstention. Unlike the “remote interest” exceptions in Section 1091, most of the “non-interest” exceptions listed in Section 1091.5 are available to both board members and employees who are covered by the general prohibition in Section 1090. Although this is not an exhaustive list, examples of some of those exceptions are listed below:

- Non-interest exception for government salary, per diem, or reimbursement of expenses when the contract does not involve the department of the government entity that employs the officer or employee (Section 1091.5 (a)(9));
- Non-interest exception for government salary to an officer’s or employee’s spouse when the spouse was employed by the government entity for at least one year prior to the officer’s or employee’s election or appointment (Section 1091.5 (a)(6));
- Non-interest exception for a non-compensated officer of a non-profit corporation that supports the functions of the public entity or to which the public entity is required to give particular consideration (Section 1091.5 (a)(8));
- Non-interest exception for non-salaried members of a non-profit corporation (Section 1091.5 (a)(7)); and
- Non-interest exception involving the receipt of public services on the same terms as would be provided if the officer were not a member of the governmental body or board (Section 1091.5(a)(3)); and
- Non-interest exception for contracts for public services between a special district and its board members if the special district requires board members to be landowners or representatives of a landowner and the contract is made on the same terms and conditions granted to everyone else. (Section 1091.5(a)(14)). This exception was enacted in 2013. For purposes of the exception, “public services” include the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.
3. **A Contract Made in Violation of Section 1090 is Void and Officials Violating Section 1090 Are Subject to Severe Penalties**

Finally, it is important to note the extreme consequences of a Section 1090 violation and thus the caution with which persons must act to ensure compliance with this law. A public official who willfully violates any of the provisions of Section 1090 “is punishable by a fine of not more than $1,000, or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.” § 1097. The civil fines applicable to Section 1090 violations now can be up to $10,000. § 1097.3(a). In addition, a contract made in violation of Section 1090 is void under Section 1092. *People ex rel. State v. Drinkhouse*, 4 Cal. App. 3d 931, 935 (1970) (“[A] contract in which a public officer is interested is void, rather than voidable as the statute indicates.”). And as with the Political Reform Act, acting on the advice of counsel is not a defense to a Section 1090 violation. See *People v. Chacon*, 40 Cal. 4th 558 (2007); *Chapman v. Superior Court*, 130 Cal. App. 4th 261 (2005).

Given these consequences, it is advisable for public officials to be very cautious in deciding whether they may participate in a contracting decision based on the existence of a “non-interest exception,” whether they must abstain from those decisions based on the application of a “remote interest” exception, or whether their financial interest lies outside any exception and therefore precludes the public entity from entering into the contract altogether.

4. **Aiding and Abetting Section 1090 Violations**

In 2014, the California Legislature adopted Senate Bill 952, which added a subsection (b) to Government Code Section 1090, which now reads: “An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a)” of Section 1090. The Legislature added a similar provision to Section 1093 such that a person “shall not aid or abet the Treasurer, Controller, a county or city officer, or their deputy or clerk” in purchasing or selling “warrants, scrip, orders, demands, claims, or other evidences of indebtedness” for personal gain. § 1093. The Legislature also added a penalty for these crimes to Section 1097, which applies when a person “willfully aids or abets an officer or person in violating” Section 1090 or certain other conflict provisions. In light of these new provisions, city officers and employees must be careful to avoid “aiding and abetting” a Government Code Section 1090 violation.

5. **Seeking FPPC Advice on Section 1090**

In 2013, the State Legislature adopted Assembly Bill 1090, which amended the enforcement provisions applicable to Government Code Section 1090. With the adoption of AB 1090, a person who is subject to the prohibition in Government Code Section 1090 may request advice and/or a formal opinion from the FPPC. § 1097.1(c). Such advice is admissible as evidence of good faith conduct by the requester if the requester truthfully disclosed all material facts and relied on the advice or opinion of the
FPPC. § 1097.1(c). In addition, the FPPC is now authorized to enforce the prohibition in Government Code Section 1090 through administrative or civil actions. § 1097.1(a).

6. Statute of Limitations for Section 1090 Violations

The statute of limitations for bringing a criminal prosecution under Section 1090 is three years from the discovery of the violation. People v. Honig, 48 Cal. App. 4th 289, 304 (fn. 1) (1996); Penal Code §§ 801, 803(c). However, under Government Code Section 1092, a four-year statute of limitations applies to actions brought under Section 1090 to invalidate a contract. This four-year statute of limitations begins to run from the date that the plaintiff has discovered the violation, or in the exercise of reasonable care, should have discovered the violation. A four-year statute of limitations also applies to civil actions brought by the FPPC. § 1097.3(c).

C. 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. See Terry v. Bender, 143 Cal. App. 2d 198, 206 (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, 51 (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. Att’y 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 council member who voted to deny permits for a condominium project near his house 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, a more recent court decision creates some uncertainty as to whether the common law doctrine should be applied when statutory conflict of interest laws already address the particular situation. In BreakZone Billiards v. City of Torrance, 81 Cal. App. 4th 1205, 1233 (2000), the court declined to construe allegations of an official’s bias in a decision to constitute a conflict of interest at common law when the applicable statutes already had been construed not to create a conflict of interest in that situation. In BreakZone, the court indicated, “[w]e continue to be cautious in
finding common law conflicts of interest . . . . We reject the application of the doctrine in this case, assuming, arguendo, it exists." 81 Cal. App. 4th at 1233.
II. OTHER SPECIALIZED CONFLICTS OF INTEREST LAWS AND REGULATIONS

A. Doctrine against Holding Incompatible Offices

1. The Common Law Doctrine against Holding Incompatible Offices

In addition to Government Code Section 1099 (discussed below), a common law doctrine (that is, legal principles established over time by court decisions) applies to prevent public officials from holding multiple public offices simultaneously. The common law doctrine against incompatibility of offices arose from a concern that the public interest would suffer when one person holds two public offices which might possibly come into conflict. The California Supreme Court set forth the following test for incompatibility of offices 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 641-42. Incompatibility of offices is not measured only by conflicts which do exist, but also by those conflicts which might arise. Chapman, 16 Cal. 2d 636, 641-42 (1940); 66 Ops. Cal. Att’y Gen. 382, 384 (1983); 64 Ops. Cal. Att’y Gen. 288, 289 (1981).

In order to determine whether two positions are in conflict, it is necessary to determine first whether the two positions are both public offices within the scope of the doctrine. No statutory definition is given to the term “public officer.” However, in Chapman, 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."

16 Cal. 2d at 640 (citation omitted).

Abstention has not been recognized 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. Accordingly, the ability to abstain when a conflict arises will not excuse the incompatibility or obviate the effects of the doctrine.”


The effect of the doctrine of incompatibility of offices is that a public official who enters into the duties of a second office is deemed to have automatically vacated the first office if the two are incompatible. Chapman, 16 Cal. 2d at 644.

A list of some of the offices that the California Attorney General has found to be incompatible are as follows:


• City planning commissioner and school district board member. 84 Ops. Cal. Att’y Gen. 91 (1997).

• City manager and school district board member. 80 Ops. Cal. Att’y Gen. 74 (1997).

• School district board member and community services district board member. 75 Ops. Cal. Att’y Gen 112 (1992).

2. The Statutory Codification of the Common Law Doctrine of Incompatible Offices – Government Code Section 1099

Government Code Section 1099 is intended to create a statutory rule against holding incompatible offices. This section is not intended to expand or contract the common law rule and is intended to be interpreted based on precedent created through court decisions under the common law doctrine. Stats. 2005, c. 254 (S.B. 274), § 2.

Section 1099 provides that a public officer, including but not limited to an appointed or elected member of a governmental board, commission, committee or other body, shall not simultaneously hold two public offices that are incompatible as defined by the statute. Section 1099 provides that offices are incompatible when:

• Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;

• Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties and loyalties between the offices; or

• Public policy considerations make it improper for one person to hold both offices.

As is the case under the common law doctrine, Section 1099 provides that when two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second office. However, Section 1099 recognizes that certain state laws or local ordinances may expressly provide for the simultaneous holding of particular offices and that result would not be precluded by Section 1099. Section 1099 does not apply if one of the positions is an employment rather than an office. It also does not apply when one of the positions is a member of a legislative body that has only advisory powers. § 1099(c), (d).
B. Incompatible Outside Activities

Government Code Section 1126(a) provides:

"[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, functions, 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, 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. §§ 1127, 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 his or her public agency unless the public agency in which he or she serves 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. Many cities have not adopted such ordinances.

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 council member, 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. § 1126(a).

C. Successor Agency and Oversight Board Conflicts

1. Form 700s for Successor Agency and Oversight Board Members

Regarding any city that adopted a resolution establishing a successor agency to the former redevelopment agency as a separate legal entity, an official who already files an annual Form 700 in his or her capacity as a city official does not need to file an Assuming Office Statement ("Assuming Office Form 700") within 30 days of assuming his or her position with the successor agency as long as these same city officials are
already required to disclose all categories of economic interests. The successor agency
official or employee will, however, have to file an Assuming Office Form 700 if he or she
is not already required to disclose as a city official all categories of economic interests.

With respect to those successor agency officers and employees who do have an
obligation to file an Assuming Office Form 700, the 30-day deadline for completing
those filings is likely 30 days from the date he or she was appointed rather than 30 days
after the officer or employee is sworn in to office or starts to perform duties. This means
that if the successor agency was formed as a separate governmental entity, the date
that the official was appointed to his or her position would be the date that the
successor agency adopted its rules and regulations, established successor agency
positions in those rules, and designated specific city officials to fill those positions.
However, if the successor agency appointed certain city officials to those positions at a
later point in time, that later date would be the date from which the 30 day period
would commence to run.

Members of an oversight board are subject to the Political Reform Act. This means
oversight board members must comply with both the Act’s conflict of interest
disqualification and disclosure requirements. Oversight board members who do not
also hold a concurrent city position need to file an Assuming Office Form 700 within 30
days of their appointment. For example, the appointees of the county, superintendent
of schools, and other non-city representatives who do not concurrently hold a city
position, should file an Assuming Office Form 700 as an oversight board member and file
it with the city clerk. Similarly, if one or both of the mayor’s appointees do not
concurrently hold a position with the city requiring disclosure of economic interests in all
categories, they should file an Assuming Office Form 700 within 30 days of their
appointment. However, if a person appointed by the mayor to represent the city on
the oversight board or any other appointee to the oversight board concurrently holds a
position with the city that is already required to broadly disclose in all categories, these
persons would not be required to file an Assuming Office Form 700 under the FPPC staff
rationale noted above.

2. Obligation of Successor Agencies to Adopt Conflict of Interest Codes

The Act requires that local government agencies must adopt a conflict of interest
code. An exception applies for those agencies where all of its officials and employees
are already required to file Statements of Economic Interests as city officials. In the
case of a successor agency, some members of its oversight board will not be city
officials or employees. For example, the county, school district, county superintendent,
and community college appointees are most likely not going to be current city officials
or employees. Consequently, the successor agency must adopt a conflict of interest
code that includes the oversight board.
3. City Councils are the Code Reviewing Bodies for the Successor Agency’s Conflict of Interest Code

Section 82011(c) provides that for “city agencies,” the code reviewing body is the city council.

The term “city agencies” is not defined in the Act but has been interpreted by the FPPC to mean local government agencies located solely within the boundaries of one city. In the past, the FPPC has interpreted a redevelopment agency as being a “city agency” and the city council as being the code reviewing body for the redevelopment agency. In the case of a successor agency of a former redevelopment agency that operates solely within the boundaries of one city, the successor agency will not have a jurisdictional boundary that extends beyond the boundary of the city. Consequently, the city council of the city in which the former redevelopment agency operated will be the code reviewing body for the successor agency.

The city council, as the code reviewing body, is required to review and approve the successor agency’s conflict of interest code not later than six months from the date the successor agency came into existence. § 87303. However, we recommend that this step be completed prior to that deadline for reasons mentioned below. Thus, it is appropriate to place the successor agency’s conflict of interest code on a city council agenda for approval soon after the successor agency has adopted it.

4. The City Council May Designate the City Clerk as the Filing Officer for the Successor Agency’s Statements of Economic Interests

The term “filing officer” is defined in the Act to be the office or officer with whom any statement or report is required to be filed under this title. § 82027. In determining where Form 700s are to be filed for officials of a successor agency, the city council, as the code reviewing body, may designate whether the “agency” (successor agency) or the “code reviewing body” (city council) is to be the entity with which Form 700s are filed. § 87500(p). Once that designation is made, the duty to perform the functions of filing officer must be delegated to an individual in either entity such as the city clerk, pursuant to Regulation 18227. The person designated becomes the “filing officer.” Regulation 18227 provides that every entity with whom forms are filed shall assign to a specific official the responsibility for receiving and forwarding reports filed pursuant to Section 87500 (including Form 700s). Once assigned, the filing officer has a duty to supply Form 700s, review submitted Form 700s for completeness, and notify all persons who have failed to file forms and report violations to appropriate agencies. See § 81010.

Thus, the city clerk or the successor agency secretary will most likely be the filing officer for the successor agency but such designation will ultimately be determined by the city council when acting as the code reviewing body for the successor agency’s conflict of interest code. In the action to approve the successor agency’s conflict of interest code, the city council should approve the successor agency’s designation of the city clerk or successor agency secretary to be the filing officer for the successor agency’s officials. In the meantime, it is appropriate for the city clerk or successor agency
It is recommended that one of the first steps for the city clerk or successor agency secretary to undertake is to make a record of the appointment date for each officer of the successor agency and each member of the oversight board. With respect to those officials of the successor agency and oversight board that are not otherwise exempt from filing Assuming Office Form 700s for their position with the successor agency, city clerks should provide forms to those persons and facilitate the filing of those forms within the 30-day time period required.

D. Discount Passes on Common Carriers

Article XII, Section 7 of the California Constitution states:

“A transportation company may not grant free passes or discounts to anyone holding an 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:

- The prohibition applies to public officers, both elected and non-elected, but not employees.
- The prohibition applies to interstate and foreign carriers as well as domestic carriers, and to transportation received outside California.
- The prohibition applies irrespective of whether the pass or discount was provided in connection with personal or public business.
- 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 council members were unaware of the prohibition, the Attorney General allowed a quo warranto suit that subsequently settled before judgment. See, e.g., 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.

E. Conflicts upon Leaving Office – the “Revolving Door”

Former elected officials and former city managers are restricted from receiving compensation for lobbying their city for one year after they leave public office. This restriction also applies to elected county and district officials and their chief administrative officers or general managers, but not to department directors or other public officials and employees. § 87406.3(a). A violation of the statute constitutes a misdemeanor, and the FPPC is authorized to impose administrative fines and penalties for its violation. § 91000.

The type of lobbying subject to the ban includes both formal and informal appearances before a local agency and making any oral or written communication to the agency. The statute proscribes the appearances and communications if they are made to influence administrative or legislative action, or affect the issuance, amendment, awarding or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. § 87406.3(a).

The term “administrative actions” within the scope of the lobbying ban includes “the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial.” However, matters that are “solely ministerial” are expressly excluded from the prohibition. § 87406.3(d)(1). The type of “legislative action” within the scope of the ban includes:

“the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.”
§ 87406.3(d)(2). The lobbying ban does not apply to any public official who is appearing or communicating on behalf of another local governing body or public agency of which the individual is a board member, officer or employee. Therefore, if such former elected city official or former city manager is contacting his or her city on behalf of the state, county, a school district or some other governmental entity, such activity is not precluded by the ban. Some cities have their own preexisting “revolving door” ordinances that regulate the lobbying activities of their former public officials. This state law expressly does not preempt those ordinances or prevent cities from adopting additional ordinances on the subject in the future, provided those ordinances are more restrictive than the state law. § 87406.3(c). Thus, the law merely sets a new minimum standard applicable to all cities.

F. Laws Prohibiting Bribery

A number of state statutes prohibit bribery of public officials. Specifically, it is illegal to give or offer to give a bribe to a public official, or for a public official to ask for, receive, or agree to receive any bribe. Penal Code §§ 67, 68. Under a strict reading of these statutes, Penal Code Section 68 applies to bribery of a “ministerial officer, employee, or appointee,” and Penal Code Section 67 applies only to bribery of an “executive officer in this state,” but the courts have interpreted both statutes as having a broad scope applicable to public officials generally. People v. Hallner, 43 Cal. 2d 715, 717 (1954) (observing that Penal Code Section 67, despite its wording, is “all inclusive” and includes city officials, and that “[b]y the sixty-seventh section the offense defined is that of one who offers; by the sixty-eighth, that of one who receives a bribe”); People v. Strohl, 57 Cal. App. 3d 347, 360 (1976) (“Numerous California Supreme Court and appellate court decisions since 1954 have held that ‘executive officers’ of various levels of local government, including the county level, as herein involved, come within [Penal Code] Section 67.”).

The Legislature also expressly made bribery of council members and supervising officials a crime, as well as solicitation of bribes by council members and supervisors. Penal Code § 165. Another statute makes it a crime for anyone to attempt to bribe “any person who may be authorized by law to hear or determine any question or controversy.” Penal Code § 92. Considered together, these statutes cover the spectrum of public officials.

The term “bribe” signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity. Penal Code § 7(6). Note that under all of the bribery statutes, it is not only the actual giving or accepting of a bribe that is criminal; merely offering to give or receive a bribe constitutes a violation of law. See, e.g., People v. Pic'l (1982) 31 Cal. 3d 731, 739 (noting that a “meeting of the minds” is unnecessary for a bribery conviction).

A public officer forfeits his office if he requests, receives, or agrees to receive a bribe. Penal Code § 68. In addition, every officer convicted of any crime defined in the Penal
Code sections pertaining to bribery and corruption is forever disqualified from holding any office in the state. Penal Code § 98.

Note also that bribery and soliciting bribery potentially violate not only the Penal Code, but also the conflict of interest statutes. For example, in *Terry v. Bender*, 143 Cal. App. 2d 198 (1956), a court of appeal held that a council member violated Government Code Section 1090 when he solicited and received a bribe from an attorney in exchange for the council member’s vote to employ the attorney with the city. 143 Cal. App. 2d at 207 (observing that by accepting the bribe, the council member “had placed himself in a position of economic servitude” in violation of Section 1090). Because the bribe “restricted the free exercise of the discretion vested in him for the public good,” there was an impermissible conflict of interest.

**G. Campaign Contributions**

1. **Conflicts of Interests Arising on Appointed Boards and Commissions**

The Political Reform Act contains restrictions on the receipt and solicitation of campaign contributions. Under a portion of the Act known as the “Levine Act,” a public agency official may not participate in decisions affecting individuals or entities who have given the official more than $250 in campaign contributions within the past 12 months. § 84308. However, a city council is not considered an “agency” for purposes of the statute. § 84308(a)(3). This disqualification therefore does not apply to a council member when participating in a decision of the council. It also does not apply to a council member who sits on the board of another agency of the city if the governing board of that agency is made up entirely of members of the city council when that member is participating in a decision of that agency. Regulation 18438.1(a)(1). However, it does apply to a council member when that person is serving on the board of a joint powers authority. Importantly, this prohibition applies to planning commissioners and other officers of the public entity who are not directly elected by the voters. Thus, planning commissioners must comply with the restrictions in Government Code Section 84308.

The Act also classifies campaign contributions differently than other financial interests. As discussed previously, the Act requires that public officials abstain from government decisions in which they have a financial interest, with certain exceptions. § 87100. A public official generally has a proscribed financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on (among other things): (i) a source of income aggregating $500 or more in value during the 12 months prior to the decision; or (ii) a donor of a gift or gifts aggregating $470 or more in value during the 12 months prior to the decision. § 87103(c), (e); Regulations 18700, 18940.2. Campaign contributions, however, are not considered a “financial interest” for purposes of this disqualification because they are neither “income” nor a “gift” within the meaning of the statute. §§ 82028(b)(4), 82030(b)(1). This disqualification therefore is not triggered as a result of a council member’s receipt of a campaign contribution.
In other words, council members acting in their capacity as elected council members are not prohibited from acting on a matter which involves someone who has given them a political contribution. Regulation 18438.1(a). For example, the California Supreme Court ruled that Los Angeles City Council members were not disqualified from voting on a subdivision map by reason of receiving campaign contributions from the applicants and their agents. *Woodland Hills Residents Ass’n, Inc. v. City Council*, 26 Cal. 3d 938, 945 (1980) (“Plaintiffs’ accusation that receipt of a campaign contribution inevitably results in an appearance of bias or prevents a fair hearing is unwarranted.”). Similarly, a court of appeal concluded that Torrance City Council members were not disqualified from voting on a conditional use permit application by reason of receiving campaign contributions from a party alleged to be in opposition to the application. *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205 (2000).

Receipt of a campaign contribution can, however, disqualify a public official who serves on more than one public body. For example, under the Levine Act, a council member acting on behalf of an agency other than the city must abstain from a license, permit or other use entitlement decision involving an applicant, proponent or opponent who has made a contribution to the council member’s campaign in excess of $250 within the preceding 12 months. The fact of the campaign contribution must also be disclosed prior to the abstention. This disqualification is inapplicable, however, if the campaign contribution is returned within 30 days of receipt. § 84308(c).

2. **Application of Federal Corruption Laws to the Offer or Solicitation of Illegal Campaign Contributions Tied to an Official Act**

Another exception to the general rule that campaign contributions do not preclude an official from voting on a matter affecting a campaign contributor is the application of federal corruption laws to situations where the receipt of illegal, laundered or unreported campaign contributions are tied to an official act. In one recent case arising out of the City of San Diego, two council members were charged and convicted of wire fraud for conspiring to change the city’s ordinance regulating adult-oriented businesses in exchange for campaign contributions from an adult-oriented business that had been illegally “laundered” through contributions made by residents of the city or which had been unreported and which constituted bribes. See *United States v. Inzunza*, 303 F. Supp. 2d 1041, 1043 (S.D. Cal. 2004) for a list of the charges; the case was referred to in the press as the San Diego “Strippergate” case. The charges included the alleged use of wire communications in interstate commerce in furtherance of the alleged conspiracy to defraud the public of their intangible right to honest service, in violation of 18 U.S.C. §§ 1951 (the Hobbs Act) and 1952 (Interstate Transportation in Aid of Racketeering). One of those convictions was later overturned. However, the case points out that direct connections between official acts and illegal or unreported campaign contributions may result in charges of bribery under California law and a violation of certain federal wire fraud and racketeering laws.
3. Ban on Local Agency Officials and Employees Soliciting Campaign Contributions from Officials and Employees of the Same Agency

In an effort to avoid local agency public employees being drawn into local political campaigns or having their positions the subject of political reward or retribution, California law contains a prohibition on the solicitation of campaign contributions by a local agency official or employee of other officials or employees within the same local agency. Section 3205 prohibits an officer or employee of a local agency from soliciting political contributions from an officer or employee of that same local agency. The prohibition applies to incumbents seeking re-election and to non-incumbent candidates for local agency office. An exception exists for broad general public solicitations to a “significant segment of the public" that also include some local agency officials and employees of that agency. § 3205(c). No definition exists as to what constitutes a significant segment of the public. In the context of conflict of interest provisions in the Political Reform Act, that term is defined to include segments of the local agency population such as ten percent of all residents, and, in the absence of any court interpretation of the law, that standard provides some guidance on what may be a sufficiently broad solicitation to come within the scope of the exception. Violation of the prohibition is punishable as a misdemeanor and may be prosecuted only by the County District Attorney. § 3205(d).

4. Nepotism

One other potential source of a conflict of interest is a governmental decision that affects a family member. If a public official’s relative has an application before the government agency on which the public official serves, the public official would potentially have an improper incentive to approve the relative’s application. Because the financial interests of a public official’s spouse and dependent children (children under 18 years of age who are dependent financially on their parents) are attributed to the public official under the Political Reform Act and Section 1090, participation in decisions financially benefiting spouses and dependent children is limited. §§ 82030, 87103; Thorpe v. Long Beach Community College Dist., 83 Cal. App. 4th 655 (2000) (holding that Section 1090 prohibited a community college district board from voting to approve the promotion of the spouse of a board member). If the approval did not require a decision by the legislative body, however, the public entity could still potentially approve an application or make a decision if the related public official did not participate.

With respect to adult children and more extended family members, the Political Reform Act and Section 1090 would not automatically apply in the absence of some financial relationship between the public official and the adult child or extended family members. Davies Advice Letter, No. I-90-329, 1990 WL 698051 (1990). Currently, state law only prohibits such “extended family” interests for the governing boards of school districts. Educ. Code § 35107(e). Under that statute, a school board member must abstain from participating in personnel matters that uniquely affect his or her relative. “Relative” is defined as an adult who is related to the official by blood or affinity within the third degree, or in an adoptive relationship within the third degree. There is no
comparable statute for cities and counties, but some local governments have established similar restrictions through ordinances or policies.

The issue of familial relations comes up more frequently in the context of personnel decisions, as when a public entity prohibits the hiring of relatives of public officials or employees. Such anti-nepotism policies are generally upheld by the courts. For example, in *Parsons v. County of Del Norte*, 728 F. 2d 1234 (9th Cir. 1984), the Ninth Circuit upheld a county policy prohibiting spouses from working in the same department. The Ninth Circuit held that the policy did not violate the Equal Protection and Due Process clauses of the U.S. Constitution and was rationally related to a legitimate government interest: avoidance of conflicts of interest and favoritism in employee hiring, supervision and allocation of duties. See also *Kimura v. Roberts*, 89 Cal. App. 3d 871, 875 (1979) (upholding a policy prohibiting spouses from serving on both the city council and planning commission, reasoning that “the finding of the mayor and the city council that an actual or implied conflict of interest existed, is eminently rational, practical and legally sound”).

Note, however, that state law prohibits the application of anti-nepotism rules to spouses in some circumstances. The Fair Employment and Housing Act prohibits an employer from making an employment decision based on whether an employee or applicant has a spouse presently employed, except in two specific situations:

- For business reasons of supervision, safety, security or morale, an employer may refuse to place one spouse under the direct supervision of the other spouse.
- For business reasons of supervision, security or morale, an employer may refuse to place both spouses in the same department, division or facility if the work involves potential conflicts of interest or other hazards greater for married couples than for other persons.

2 C.C.R. § 7292.5(a) (emphasis added).

Accordingly, any anti-nepotism policy that a city or county adopts must not apply to the hiring of spouses, except in cases of direct supervision, where greater conflicts or hazards occur for married persons, or where a conflict of interest statute applies.
III. LAWS AND REGULATIONS AFFECTING 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 governmental decisions 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 council members 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.

A. Limitations on Receipt of Gifts

1. 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 [$470].” (The gift limit amount has been adjusted in accordance with Regulation 18940.2.) Officials listed in Section 87200, in turn, include mayors, council members, planning commissioners, city managers, city attorneys, city treasurers, chief administrative officers and other public officials who manage public investments, 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 $470 in value in any calendar year, if the gifts would be required to be reported on his or her statement of economic interests. § 89503(c).

2. Biennial Gift Limit Adjustment

The Act authorizes the FPPC to make an inflationary adjustment of the gift limitations set forth in Section 89503 every two years. § 89503(f). The most recent adjustment became effective on January 1, 2017, wherein the gift limit increased to $470. Regulation 18940.2. This figure will be further adjusted in future odd-numbered years.
3. Exceptions to Gifts

None of the following is a gift and none is subject to any limitation on gifts (Regulation 18942):

a. Informational Materials

Informational materials such as books, reports, calendars, audio and video recordings, scale models, maps, free or discounted admission to informational conferences or seminars, and on-site demonstrations, tours or inspections that are provided to convey information for the purpose of assisting the official in the performance of official duties are not considered gifts. The cost of transportation for on-site demonstrations, tours or inspections may fall into this exception in particular situations. Regulations 18942(a)(1), 18942.1.

b. Returned Gifts

Except for passes and tickets as provided for in Regulation 18946.1, a gift that is not used and that, within 30 days of receipt, is returned, donated, or for which reimbursement is paid pursuant to Regulation 18941, is not a gift. The donation of a gift under this exception must be to either a 501(c)(3) charitable organization with which the official or a member of his or her family holds no position or to a government agency, without being claimed as a tax deduction. Regulation 18942(a)(2).

c. Family Gifts

A payment from an individual's family member is not subject to the gift limitations, unless the donor is acting as an agent or intermediary for any other person. The family members included in this exception are a spouse or former spouse, child or step-child, parent, grandparent, grandchild, brother, sister, current or former parent-in-law, current or former brother-in-law, current or former sister-in-law, nephew, niece, aunt, uncle, grand nephew, grand niece, grand aunt, grand uncle, first cousin or first cousin once removed, or the current or former spouse of any such person other than a former in-law. Regulation 18942(a)(3).

d. Campaign Contributions

Campaign contributions are not subject to gift limitations. However, an official is nonetheless required to report campaign contributions on his or her Form 700. Regulation 18942(a)(4).

e. Inherited Money or Property

Devises or inheritances of any kind are exempt from gift limitations. Regulation 18942(a)(5).
f. **Awards**

A personalized plaque or trophy with an individual value of less than $250 is not a gift. Regulation 18942(a)(6).

g. **Home Hospitality**

The cost of home hospitality is not considered a gift unless any part of the cost is paid directly or reimbursed by another person, any person deducts any part of the cost as a business expense on a tax return, or the host has an understanding with someone else that any amount of compensation the host receives from that person includes a portion to be utilized to provide gifts of hospitality. Regulation 18942(a)(7). “Home hospitality” is defined as any benefit received by the official, and the official’s spouse and family members when accompanying the official, which is provided by an individual with whom the official has a relationship, connection, or association unrelated to the official’s position and the hospitality is provided as part of that relationship, connection, or association in the individual’s home when the individual is present. Home hospitality includes entertainment, occasional overnight lodging, and any food, including food provided by other guests at the event and benefits received by the official when the official serves as the host. In determining where this exception is available, the official is to presume that the cost of the hospitality is paid by the host unless the host discloses to the official or it is clear from the surrounding circumstances that someone other than the host paid the cost or part of the cost of the hospitality. Regulation 18942.2.

A “home” includes a vacation home owned, rented, or leased by the individual for use as his or her residence, including in some cases a timeshare or a motor home or boat owned, rented, or leased by the individual for use as his or her residence. “Home” also includes any facility in which the individual has a right-to-use benefit by his or her home residency, such as a community clubhouse. Regulation 18942.2.

h. **Presents on Personal or Family Occasions**

Benefits commonly exchanged between an official and an individual, other than a lobbyist, on holidays, birthdays, or similar occasions are not gifts as long as the presents exchanged are not substantially disproportionate in value. For purposes of this exception, “benefits commonly exchanged” includes food, entertainment, and nominal benefits provided to guests at an event by an honoree or other individual, other than a lobbyist, hosting the event. Regulation 18942(a)(8)(A).

i. **Reciprocal Exchanges**

Reciprocal exchanges made in a social relationship between an official and another individual who is not a lobbyist and with whom the official participates in repeated social events are not gifts where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities. The repeated social events may include lunches, dinners, rounds of golf, attendance at entertainment or sporting events, or any other such event so long as the total value of payments received by the official within the year is not
substantially disproportionate to the amount paid by the official. If the official receives much more than what he or she paid, the official has received a gift for the excess amount. This exception does not apply to any single payment that is equal to or greater than $470. Regulation 18942(a)(8)(B).

j. Leave Credits Donated to an Official

Leave credits, including vacation, sick leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official’s employer are not gifts as long as they are available to all employees in the same job classification or position. This exception does not include donations of cash. Regulation 18942(a)(9).

k. Disaster Assistance

Payments received under a government agency program or a program established by a 501(c)(3) organization designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients are not gifts as long as such payments are available to members of the public regardless of official status. Regulation 18942(a)(10).

l. Admission when “Speech” Made

Payment of the official’s admission by the organizer of an event is exempt from the gift limitations if the official makes a “speech” at the event. Regulation 18942(a)(11). This exemption applies if the official is “making a speech, participating on a panel, or making a substantive formal presentation at a seminar or similar event. Regulation 18950(b)(2). For the purpose of the exemption, the price of admission can include food and “nominal items” including things like pens, stress balls, note pads, etc. Regulation 18942(a)(11).

m. Campaign Travel

The payments made to an elected officer or candidate for his or her transportation, lodging, or subsistence provided in direct connection with campaign activities, including attendance at political fundraisers, are exempt from the gift limitations. Payments made during the six-month period prior to an election are considered “in direct connection” with the campaign activities if the payment is for necessary transportation, lodging, or subsistence and used for the officer’s or candidate’s participation in forums, debates or other speaking events or attendance at campaign strategy meetings with staff or consultants. Beyond this six-month period, the payment is considered a gift unless it is clear from the surrounding circumstances that the payment was made directly in connection with campaign activities. Regulations 18942(a)(12), 18950.4.

n. Ticket for Ceremonial Role

A ticket which is provided to an official and one guest of the official for his or her admission to an event where the official performs a ceremonial role on behalf of the agency is not a gift, so long as the agency reports the ticket on its Form 802. The term
“ceremonial role” means an act performed at an event by the official as a representative of the official’s agency at the request of the holder of the event where, for a period of time, the focus of the event is the act performed by the official. Examples include throwing out the first pitch at a baseball game, cutting a ribbon at a library opening, or presenting a certificate or award. A city may adopt specific policies to either limit or expand the permissible ceremonial roles for an official in that city, the full list of which must be forwarded to the FPPC. Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event. Regulations 18942(a)(13), 18942.3.

o. **Prize or Award in Bona Fide Contest or Competition**

A prize or award received in a manner not related to the official’s status in a bona fide contest, competition, or game of chance is not a gift. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery. Regulation 18942(a)(14).

p. **Weddings Benefits**

Benefits received as a guest attending a wedding or civil union are not gifts if the benefits are substantially the same as the benefits received by the other guests attending the event. Regulation 18942(a)(15).

q. **Bereavement Offerings**

Bereavement offerings typically provided in memory of and at the time of the passing of a spouse, parent, child, or sibling or other relative of the official are not gifts. Regulation 18942(a)(16).

r. **Acts of Neighborliness**

A service performed as an act of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances is not a gift. Examples of such services include the loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away. Individuals need not be actual neighbors for this exception to apply. Regulation 18942(a)(17).

s. **Bona Fide Date or Dating Relationship**

Personal benefits commonly exchanged between people on a date or in a dating relationship are not gifts. However, such benefits are gifts if the individual providing the benefit to the official is a lobbyist or otherwise has particular interests in the official’s role in the agency within 12 months of the date. Even if the benefit is from such an individual, the gift is still not reportable or subject to limits but the aggregate value is subject to the conflict of interest provisions if the value is $470 or greater. Regulation 18942(a)(18)(A).
t. **Acts of Human Compassion**

Payments provided to an official or his or her family member by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity are not gifts. Payments provided to an official or his or her family member to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child are also not gifts. However, under this exception, the source of the donation must be an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment must be made without regard to official status under other circumstances in which it would be common to receive community outreach. In any case, the individual providing the benefit to the official cannot be a lobbyist or otherwise have particular interests in the official’s role in the agency within 12 months of the payment. Regulation 18942(a)(18)(B).

u. **Best Friends Forever**

A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official’s position with the agency is not a gift. However, the individual providing the benefit to the official cannot be a lobbyist or otherwise have particular interests in the official’s role in the agency within 12 months of the payment. Regulation 18942(a)(18)(C).

v. **Catch-All**

Any other payment that would otherwise meet the definition of gift is not a gift where the payment is made by an individual who is not a lobbyist and it is clear that the payment was made because of an existing personal or business relationship unrelated to the official’s position. Additionally, there can be no evidence whatsoever at the time the payment is made that the official makes or participates in the type of governmental decisions that may have a foreseeable material financial effect on the individual who is the source of the payment. Regulation 18942(a)(19).

4. **Gifts to an Agency**

Regulation 18944 provides a narrow exception to the normal gift reporting requirements and value limitations for gifts made directly to a public agency. A payment made to a state or local government agency that is used for official agency business is not considered a gift or income to an individual public official who is the end recipient, even though the official receives an incidental personal benefit from the payment. As such, the gift does not have to be reported by the individual and is not subject to the annual value limitation.

A payment shall be considered a gift to the public official’s agency and not a gift to the public official if all of the following requirements are met: the payment must be
used for official agency business; the agency head must determine and control the agency’s use of the payment, including the selection of the official who will use the payment; and the agency must report the payment on a Form 801. The Form 801, which must be signed by the agency head and maintained as a public record in accordance with Government Code Section 81008, must include the following information:

- **Donor Information**: The reporting form requires not only the donor’s name, but also his or her address, and must identify any other persons who contributed to the gift, as well as the amount each person contributed. If the donor is not an individual, the report must describe the business activity or nature of the entity giving the gift.

- **Description of Payment**: The form requires a description of the payment, the date it was received, the intended purpose and the amount of the payment or the actual or estimated fair market value of the goods or services provided, if the amount is unknown.

- **Recipient Information**: The form also requires that the agency specify the name, title, and department of the agency official who used the payment.

Regulation 18944(c)(3). For any quarter year period in which the payments received by the agency aggregate to $2,500 or more since the last filing, a local agency must submit a copy of the form or a detailed summary of the information to its filing officer within 30 days after the close of the quarter. Thereafter, the filing officer must post a copy of the form or the information in a “prominent fashion” on its website within 30 days after the close of the quarter. If the local agency does not maintain a website, the agency must send its Form 801 to the FPPC, which will post the document on its own website. Regulation 18944(d).

5. **Gifts to an Official’s Family**

Regulation 18943 governs gifts to an official’s or candidate’s family. This regulation was substantially revised in late 2009 and again in 2011. Regulation 18943 adds new definitions and requirements that public officials should carefully review.

Regulation 18943 adds definitions for an official’s “family member,” which includes an official’s spouse or registered domestic partner, a dependent child, and an official’s child. “Dependent child” means a child (including an adoptive child or stepchild) of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return. Regulation 18229.1. An “official’s child” (including an adoptive child or stepchild) means a child who meets all of the following criteria:

- The child is at least 18 but no more than 23 years old and is a full-time or part-time student;
• The child has the same principal residence as the official. For purposes of this provision, a place, located away from the official’s residence, at which the child resides for the purpose of attending school is not the child’s “principal place of residence”; and

• The child does not provide more than one-half of his or her own support.

Gifts to Both an Official and One or More Family Members. A single gift to both an official and one or more members of the official’s family is a gift to the official for the full value of the gift. See “Wedding Gifts” section below for a particular exception to this rule.

Gifts Solely to Family Members. A gift given solely to a member of an official’s family is a gift to the official, when there is no established working, social, or similar relationship between the donor and the official’s family member that would suggest an appropriate association for making such a payment. A gift given to a member of an official’s family is also a gift to the official if there is evidence to suggest the donor had a purpose to influence the official, such as when:

• The donor is a lobbyist, lobbying firm, lobbyist employer, or other similar person and is registered to lobby the official’s state agency;

• The donor is involved in an action or decision before the local or state government agency in which the official will reasonably foreseeably participate or in an action in which he or she has participated within the last 12 months; or

• The donor has a contract with the official’s agency or the donor engages in a business that regularly seeks contracts with, or licenses, permits or other entitlements from, and the official may reasonably foreseeably make or participate in such a decision or has participated in such a decision within 12 months of the time the gift is made, unless the donor has less than 10 percent interest in the business contracting with or appearing before the agency.

6. Invitation-Only Events

When an official and one of his or her guests attends an invitation-only event such as a banquet, party, gala, celebration, or other similar function, other than a non-profit or political fundraiser as set forth in Regulation 18946.4, the value received is the official’s and the guest’s pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest that is available to all guests attending the event. Regulation 18946.2(b). A calculation of the pro-rata share means the total cost of the list expenses above, divided by the number of acceptances or the number of attendees at the event. Any other specific benefit provided to the official and guest at the event, such as golf green fees, is valued at fair market value. Regulation 18946.2(b).
a. **Official or Ceremonial Functions**

When an official performs an official or ceremonial function at an invitation-only event in which the official is invited to participate by the event’s sponsor or organizer to perform an official or ceremonial function, the value received is the pro-rata cost of any meal provided to the official and guest, plus the value of any specific item that is presented to the official and his or her guest at the event. Regulation 18946.2(d).

b. **Drop-In Visit**

Except for an event sponsored by a lobbyist, lobbying firm, or lobbyist employer, if an official attends an invitation-only event and does not stay for any meal or entertainment otherwise provided at the event, receiving only minimal appetizers or drinks, the value of the gift received is the value of any specific item, other than food, that is presented to the official and his or her guest at the event. For purposes of this regulation, “entertainment” means a feature show or performance intended for an audience and does not include music provided for background ambiance. Regulation 18946.2(e).

c. **Lobbyists, Lobbying Firms, and Lobbyist Employers**

Where an official attends an invitation-only event sponsored by a lobbyist, lobbying firm, or lobbyist employer, the value of the gift is the pro-rata share of the cost of the event. Regulation 18946.2(b), 18640. If the official notifies the lobbyist, lobbying firm, or lobbyist employer that the official attended the event but that he or she did not stay for any meal or entertainment, receiving only minimal appetizers and drinks, the value of the gift received is the value of any specific item (other than food) that is presented to the official and the official’s guest at the event. Regulation 18640(b). Again, the term “entertainment” means a feature show or performance intended for an audience and does not include music provided for background ambiance. Regulation 18640.

7. **Tickets to Political and Charitable Fundraisers**

Regulation 18946.4 provides special rules for tickets provided to public officials to fundraisers for nonprofit and political organizations. Such tickets are not considered gifts to a public official if certain requirements are met. This exception applies only to two tickets provided to an official, and only if it is provided directly by the charity or campaign committee; additional tickets are treated as gifts. The requirements vary depending on whether the organization is a 501(c)(3) nonprofit, a non-501(c)(3) nonprofit, or a political organization.

a. **Non-501(c)(3) Nonprofit Fundraiser**

Regulation 18946.4(a) provides that a ticket to a fundraising event for a nonprofit, tax-exempt organization that is neither a political campaign committee nor a 501(c)(3) nonprofit shall be valued as follows:
• Where the ticket to the fundraiser clearly states that a portion of the ticket price is a donation to the organization, or the organization provides information indicating the portion of the admission price that constitutes the donation, then the value of the gift is the face value of the ticket or admission reduced by the amount of the donation – i.e., the “nondeductible portion” of the price of admission.

• If there is no ticket or other official information provided by the organization indicating the value of the nondeductible portion of admission, the value of the gift is the pro-rata share of the cost of any food, catering service, entertainment, and any other item provided to the official that is available to the other guests. A calculation of the pro-rata share means the total cost of the listed expenses, divided by the number of acceptances or the number of attendees. Any other specific benefit provided to the official at the event, such as golf green fees, is valued at fair market value.

b. **Fundraiser for a 501(c)(3) 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), such an organization may provide two tickets per event to an official, and the ticket shall have no value. Regulation 18946.4(b). Any additional tickets or admissions provided by the 501(c)(3) organization, any tickets provided to or controlled by the official, and any tickets not provided directly by the 501(c)(3) are valued as tickets from a non-501(c)(3) nonprofit. Regulation 18946.4(b).

c. **Political Fundraiser**

For the gift of a ticket, pass, or other admission privilege to a political fundraising event for a “campaign committee” or a comparable committee regulated under federal law or the laws of another state, the committee or candidate may provide two tickets per event to an official that shall be deemed to have no value. A “campaign committee” is any person or persons who directly or indirectly receives contributions totaling two thousand dollars ($2,000) or more in a calendar year (note: this was increased from $1,000 in 2015), makes independent expenditures totaling one thousand dollars ($1,000) or more in a calendar year, or makes contributions totaling ten thousand dollars ($10,000) or more in a calendar year to or at the behest of candidates or committees. Regulation 18406; § 82013.

8. **Tickets and Passes to Events**

a. **Exempt from Reporting Requirements and Value Restrictions**

In 2010 and 2011, the FPPC completely revised the regulations regarding tickets and passes that provide admission or access to facilities. Regulation 18944.1 applies only to the benefits the official receives from tickets or passes given to an agency for admission to a facility, event, show or performance for an entertainment, amusement,
recreational or similar purpose that are provided to all members of the public with the same class of ticket or pass. The regulation does not apply to: tickets to lunch or dinner events such as non-profit fundraisers where there is no recreation or entertainment; tickets provided in which the official performs a ceremonial role; or, admission provided to a school, college or university official, coach, athletic director or employee to attend an amateur event performed by students of that school, college or university. Accordingly, when a public official receives a ticket or pass from an agency and the official uses the ticket or pass, it does not have to be reported as a gift if one or more of the following exceptions apply:

- **Reimbursement.** The ticket or pass is not considered a gift if the official reimburses the agency for the ticket.

- **Treated as Income.** The ticket or pass is not considered a gift if the official treats the ticket or pass as income consistent with applicable state and federal income tax laws and the agency reports the distribution of the ticket or pass as income on its Form 802.

- **Agency-Distributed Ticket or Pass from Outside Source.** If a third party gives a ticket or pass to an agency, and the agency then distributes the ticket to an official for his or her use, it is not a gift so long as: the original source of the ticket or pass has not earmarked it for use by particular agency officials; the agency determines in its sole discretion who uses the ticket or pass; and the distribution of the ticket or pass by the agency is made in accordance with a legitimate policy adopted by the agency, as described below.

- **Agency-Provided Ticket or Pass.** A ticket or pass that an agency (1) obtains pursuant to the terms of a contract for use of public property, (2) obtains or controls because the agency controls the event or venue, or (3) purchases at fair market value and distributes in accordance with a legitimate policy adopted by the agency, as described below, is not a gift.

b. **Written Policy for Distribution of Tickets.**

The distribution of tickets and passes described above must be made pursuant to a written policy approved by the agency’s legislative or governing body and posted on the agency website and maintained as a public record, subject to inspection and copying. Regulation 18944.1(e). The policy must contain the following: (1) a provision setting forth the public purposes of the agency for which tickets or passes may be distributed, which may include supporting general employee morale, retention or to reward public service if tickets or passes are given to officials who are not elected; (2) a provision requiring that the distribution of any ticket or pass to, or at the behest of, an official accomplish a stated public purpose of the agency; and (3) a provision prohibiting the transfer of any ticket received by an agency official, except to his or her immediate family or no more than one guest. The agency’s legislative or governing
c. **Form 802 for Reporting Distribution of Tickets and Passes.**

Within 45 days of receiving a ticket or pass, the head of the agency must fill out and certify a Form 802 describing the distribution of tickets or passes to an official. The Form 802 requires: (1) the name of the official who received the ticket or pass, (2) a description and date of the event, (3) the face value of each ticket or pass, (4) the number of tickets or passes distributed to the official, (5) if the official gave the ticket or pass to another person, the name of that person, and (6) the specific public purpose under which the distribution was made or that the ticket or pass was distributed as income to the official. This form must be maintained as a public record, subject to inspection and copying. The agency must post the form, or a summary of its contents, on its website and send the FPPC, by e-mail, the agency's website link for posting on its website. Regulation 18944.1(f).

9. **Gifts from a Government Agency to an Official in That Agency**

A payment by an agency that provides food, beverage, entertainment, goods or services of more than a nominal value to an official in that agency is a reportable gift to that official, unless the payment is a “lawful expenditure of public moneys.” Regulation 18944.3.

Several commentators have questioned the need or usefulness of this regulation because a public agency is already prohibited from making a payment that is not a “lawful expenditure of public moneys.” Boiled down, the regulation states that it is illegal for an agency to give a gift unless the gift is legal. Until the FPPC issues some formal opinions or advice letters clarifying the regulation, or revises the text, its immediate application is unclear.

10. **Wedding Gifts**

The value to an official of a wedding gift given to an official and his or her spouse or spouse-to-be is one-half of the gift’s total value. Regulation 18946.3. This is an exception to the general rule, described above in “Gifts to an Official’s Family,” that a single gift to both an official and one or more members of the official’s family is a gift to the official for the full value of the gift. The value of a wedding gift may exceed the gift limit, currently set at $470. Regulation 18942(b)(2).

11. **Certain Gifts of Travel**

Payments for travel for a public official are generally subject to the annual gift limit, unless the payment is otherwise exempt. FPPC regulations state that a “payment for travel” includes “any payment that provides transportation to an official from one location to another location,” as well as the cost of lodging and food connected with the travel. Regulation 18950(b).
For reporting purposes, payments of air travel are valued in accordance with FPPC regulation 18946.5, as follows. Air travel is valued as the price the carrier charges the public for the same class seat on the flight provided to the official in the case of a commercial flight. The value of all other air transportation is the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, divided by the number of passengers aboard the flight.

Exceptions for certain gifts of travel are found in both the Act and the FPPC regulations, which are discussed below. The FPPC regulations on this point were substantially revised in 2013. Public officials should review these exceptions closely and consult with the agency’s legal counsel before relying on them.

a. **Travel payments related to speeches that serve a governmental purpose**

Section 89506(a)(1) exempts from the gift limit any payments, advances, and reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if made in connection with a speech made by the official in the U.S. § 89506(a)(1); Regulation 18950(b). These types of payments for travel are not subject to the gift limit, but they must still be reported on a public official’s Form 700. § 89506(a)(1); Regulation 18950(a).

b. **Travel payments related to a governmental purpose made by government agencies and certain non-profits**

Section 89506(a)(2) exempts from the gift limit any payments, advances, and reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if provided by a governmental agency, a 501(c)(3) nonprofit, and a few other limited organizations/persons. § 89506(a)(2). These types of payments for travel are generally not subject to the gift limit, but they must still be reported on a public official’s Form 700. § 89506(a)(2); Regulation 18950(a). However, Section 89506(f)(3) now clarifies that if a nonprofit is acting as an intermediary or agent of a donor, then the $470 gift limitation would apply and the original donor must be listed as the source of the gift to the official, as well as considered a financial interest for the purpose of conflicts analysis. § 89506(f)(3).

c. **Travel for education, training, or intra-agency purposes**

Any payment for travel and per diem expenses received from a state, local, or federal agency is not a gift or income if used by the official for “education, training, or other inter-agency programs or purposes.” Regulation 18950(c)(2).

---

14 With respect to nonprofit organizations that regularly organize and host travel for elected officials and who make payments, advances, or reimbursements totaling more than $10,000 for a calendar year or $5,000 to an individual person, the Act now requires the nonprofits to disclose the names of donors responsible for funding the travel costs. § 89506(f). An organization “regularly organizes and hosts travel” if the organization’s expenses for travel, study tours, or conferences constitutes more than one third of its total expenses. Id. In that case, the nonprofit must disclose the names of donors who contributed $1,000 or more to the nonprofit organization and who accompanied the elected official, either in person or through an agent, for any portion of the travel. § 89506(f).
d. **Travel in a vehicle or plane owned by another official or agency**

Regulation 18950(c)(3) provides that “transportation provided to an official in a vehicle or aircraft owned by another official or agency when each official is traveling to or from the same location for an event as a representative of their respective offices” does not constitute a “payment” and therefore does not count as a gift. Regulation 18950(c)(3).

e. **Travel Made in Conjunction with Official Agency Business**

Regulation 18950.1 provides an exception for travel provided by sources other than local, state, or federal agencies if the travel is made in conjunction with certain types of official agency business. This exemption applies only to travel payments that meet all of the following requirements:

- The payment is made directly to or coordinated with the government employer and not made to the employee;
- The payment is used for official agency business;
- The government employer determines which official will use the payment for travel;
- The payment provides no personal benefit to the official who uses the payment;
- The duration of travel is limited to that necessary to accomplish the purposes for which the travel was provided; and
- The government employer reports the payment, as specified below.

The second requirement above – that the payment be used for official agency business – is satisfied under any of the following circumstances:

- The payment is made pursuant to a provision in a contract requiring the contracting party to pay any expenses associated with any required governmental travel resulting from the government agency’s participation in the contract and the payment is used for that purpose;
- The payment is made for the travel expenses of an official for the purpose of performing a regulatory inspection or auditing function that the governmental employer is mandated to perform;
- The payment is made for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental employer’s functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members;
• The payment is made for the travel expenses of an official to an educational conference directly related to the governmental employer’s functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event;

• The payment is made for the travel expenses of an official for the purpose of receiving training directly related to the official’s job duties and the payment is provided by an organization that commonly provides such training;

• The payment is made for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group meeting under his or her officially assigned job duties and the agency is authorized to provide an official to attend the meeting; or

• The payment is for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially enhance an official’s knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase of the product pursuant to the jurisdictional authority of the official’s governmental employer.

The third requirement above – that the payment is made directly to or coordinated with the agency – is satisfied if the government employer selects the public official who will use the payment for travel. If, however, the payment relates to an oral presentation to provide training or discuss policy and direction in implementing the agency’s functions, the donor of the payment may request the official who is most qualified to make the presentation. Regulation 18950.1(d).

The fourth requirement above – that the payment of travel does not provide a personal benefit to the official – is satisfied under Regulation 18950.1(e) if both of the following requirements are met:

• The travel is for purposes approved by the governmental employer under the same requirements applicable to travel using its own funds, and the official is representing his or her governmental employer in the course and scope of his or her official duties.

• Travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at agency expense.

The latter requirement does not apply to either of the following:

• Payment for food where food is provided as part of the admission to the event. Otherwise, any payments for food must be made to the
government employer pursuant to the employer’s per diem travel policy. Regulation 18950.1(b).

- Payment for any lodging or food if the lodging and food is provided at a site where the official attends a widely attended meeting or conference and the value is substantially equivalent in value to the lodging or food typically made available to the other attendees. Regulation 18950.1(g).

The sixth requirement above – that the payment is reported – is satisfied by the agency reporting the payment on a quarterly basis on a form prescribed by the FPPC. Regulation 18950.1(f). All such forms must be maintained as a public record and subject to inspection and copying under Government Code Section 81008.

f. **Travel in Connection with Bona Fide Business**

The FPPC regulations reiterate the general rule in Government Code Section 89506, whereby a payment made for transportation, lodging, or food, which is made 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. Regulation 18950.2.

g. **Travel Paid from Campaign Funds**

A payment made to an official who is a candidate to cover his or her transportation, lodging or food, in connection with campaign activities, is a contribution to the campaign committee of that official. Regulation 18950.3(a). A payment made to an official by or at the behest of a committee for the official’s actual travel expenses (including food and lodging), or for other actual and allowable campaign expenses, is neither income nor a gift to the official so long as the expenses are reportable by the committee under the relevant sections of the Political Reform Act (Government Code Sections 84100 et seq.) or applicable federal law. Any other payment for travel from a committee to an official that is not covered by Regulation 18950.3(a) and (b) is income or a gift.
B. Prohibitions on Receipt of Honoraria

Government Code Section 89502 provides that an elected officer of a local government agency and any official listed in Section 87200 shall not accept an honorarium. This prohibition also applies to candidates for elective office in a local government agency. § 89502(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. § 89501.

1. Exceptions to the Prohibition on Honoraria

   a. Earned Income Exception

   “Honorarium” does not include income earned for personal services if:

   - 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
   - The services are customarily provided in connection with the business, trade, or profession.

   Regulation 18932.

   b. Informational Materials

   “Honorarium” does not include informational materials such as books, calendars, videotapes, or free or discounted admission to educational conferences that are provided to assist the official in the performance of official duties. Regulation 18932.4(a).

   c. 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. Regulation 18932.4(b).

   d. Campaign Contributions

   “Honorarium” does not include a campaign contribution that is required to be reported. Regulation 18932.4(c).
e. **Personalized Plaque or Trophy**

“Honorarium” does not include a personalized plaque or trophy with an individual value of less than $250. Regulation 18932.4(d).

f. **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. Regulation 18932.4(e).

g. **Incidentals at Private Conference**

Likewise, “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:

- Benefits, other than cash, provided at the conference, convention, meeting, social event, meal, or gathering; or
- Free admission and food or beverages provided at the conference, convention, meeting, social event, meal, or gathering.

However, the foregoing may be reportable as gifts. Regulation 18932.4(f).

h. **Travel that Is Exempt from Gifts**

Any payment made for transportation, lodging, and subsistence that is exempt by the gift exceptions listed in Section 89506 and Regulation 18950 et seq. also does not constitute an honorarium. Regulation 18932.4(g).

C. **Prohibitions on Receipt of Certain Types of Loans**

1. **Prohibition on Loans Exceeding $250 from Other City Officials, Employees, Consultants and Contractors**

Elected officials and other city officials specified in Section 87200, including council members, 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. § 87460(a), (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. § 87460(c), (d).
2. **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 the 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. § 87461.

3. **Exceptions to Loan Limits and Documentation Requirements**

The following loans are not subject to the limits and documentation requirements specified in paragraphs 1 and 2 above:

- 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.
- Loans received by an elected officer’s or candidate’s campaign committee.
- 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.
- Loans made, or offered in writing, prior to January 1, 1998.

4. **Loans that Become Gifts are Subject to the Gift Prohibition**

Under the following circumstances, as stated in Government Code Section 87462, 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 Interests) may become a gift and subject to gift and reporting limitations:

- 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.
- 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 of: the date the loan was made; the date the last payment of $100 or more was made on the loan; or the date upon which the official has made payments aggregating to less than $250 during the previous 12-month period.
5. Exceptions – Loans that Do Not Become Gifts

The following loans will not become gifts to an official:

- A loan made to an elected officer’s or candidate’s campaign committee.
- A loan on which the creditor has taken reasonable action to collect the balance due.
- 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.)
- A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.
- A loan that would not be considered a gift as outlined in paragraph 3 above (e.g., loans from family members).

§ 87462.
Richards, Watson & Gershon delivers practical advice and solutions tailored to the unique needs of California public entities.

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Recognizing Conflict of Interest
Recognizing Conflicts of Interest
A Guide to the Conflict of Interest Rules of the Political Reform Act

Fair Political Practices Commission
August 2015
Conflicts of Interest

This guide is provided by the Fair Political Practices Commission (FPPC) as a general overview of a public official’s obligations under the conflict of interest rules provided for in the Political Reform Act (the Act).\(^1\) It is intended to help the user spot situations and issues that may give rise to a conflict. The guide will provide answers to some of the more common questions:

- What is a conflict of interest under the Act?
- Who must be vigilant about conflicts of interest?
- What precautions can be taken to prevent conflicts?
- A conflict of interest exists, what now?
- Where to go for help?

A word of caution - officials should not rely solely on this guide to ensure compliance with the Act, but should also consult the statutes of the Act, the FPPC’s regulations, and if necessary, seek legal advice.

**What is a conflict of interest under the Act?**

In 1974, the voters enacted the Political Reform Act.\(^2\) In adopting the Act, the voters recognized that conflicts of interest in governmental decision-making by public officials posed a significant danger.

“The people find and declare ..."

a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;

b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them....”\(^3\)

Under the Act, a public official will have a statutory conflict of interest with regard to a particular government decision if it is foreseeable that the outcome of the decision will have a financial impact on the official’s personal finances or other financial interests.\(^4\) In such cases, there is a risk of biased decision-making that could sacrifice the public’s interest in favor of the official’s private financial interests. In fact, preventing conflicts of interest was of such vital importance to the voters that the Act not only prohibits actual bias in decision-making but also “seeks to forestall ... the appearance of possible improprieties.”\(^5\)
Conflicts of Interest

Who must be vigilant about conflicts of interest?

Public Officials: The reach of the Act’s conflict of interest rules is commonly misunderstood or understated. The Act applies to all “public officials,” which is defined as “every member, officer, employee or consultant of a state or local government agency.”

It is universally recognized that certain elected public officials, such as city councilmembers, city managers and city attorneys, must refrain from decision-making where a conflict of interest exists. These persons hold high-level positions of trust in government. However, the Act’s conflict of interest prohibition reaches much further than high-level state and local officials. The Act’s conflict of interest disclosure and disqualification rules apply to thousands of local and state public employees and officials working throughout California.

The Public: The Act relies on individual citizens to monitor the decision-making of their elected and appointed representatives to identify whether they have a conflict of interest with respect to a specific decision. Much of the enforcement of the Act’s conflict of interest provisions is based on citizen complaints.

What precautions can be taken to prevent conflicts of interest?

In order to prevent a conflict of interest, a public official should: 1) identify and fully disclose the financial interests that may cause a conflict; 2) understand the different types of financial interests that may be the basis for a conflict; and 3) consider whether the decision’s effect on the official’s financial interest is reasonably foreseeable and material. Each step is discussed in greater detail below.

1. Identify and fully disclose the financial interests that may cause a conflict.

Public Officials: The most important thing an official can do to comply with this law is to recognize the types of interests from which a conflict of interest can arise. By learning to recognize these interests, an official will be able to spot potential problems and seek help from the agency’s legal counsel or from the FPPC.

In fact, officials can take steps to protect themselves and the public from conflict of interest decisions well in advance of making a specific governmental decision. The Act requires that public officials annually disclose their financial interests on a Form 700 (Statement of Economic Interests). This is a requirement because the voters who enacted the law recognized that an important purpose of the Act was to ensure adequate disclosure:
“Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.”

The financial interests disclosed include many of the interests that form the basis for a conflict and require disqualification under the Act. No one has a conflict of interest under the Act on general principles or because of personal bias regarding a person or subject – conflicts under the Act are based on financial interests. By thoroughly completing the Form 700, the official is on notice of the type of financial interests he or she holds that may cause a conflict of interest. If the official has no interests that governmental decisions can financially affect, the official will not have a conflict of interest.

*The Public:* Requiring officials to publicly disclose their financial interests allows the general public to monitor an official’s conduct. In other words, any individual citizen can obtain a copy of the Form 700 filed by their local or state official to determine whether the official has a conflict of interest with respect to a specific decision. This serves as an important enforcement mechanism for the Act’s disqualification requirements.

### 2. Understand the different types of financial interests that may be the basis for a conflict.

There are five types of interests that may result in disqualification:

- **Business Investment, Employment or Management.** An official has a financial interest in a business entity in which the official, or the official’s spouse, registered domestic partner, or dependent children or an agent has invested $2,000 or more. An official also has a financial interest in a business entity for which the official is a director, officer, partner, trustee, employee, or holds any position of management.

- **Real Property.** An official has a financial interest in real property in which the official, or the official’s spouse, registered domestic partner, or dependent children, or an agent has invested $2,000 or more, and also in certain leasehold interests of terms of more than a month (excluding a month-to-month lease and leases for terms of less than a month).

- **Sources of Income.** An official has a financial interest in anyone, whether an individual or an organization, from whom the official has received (or from whom the official has been promised) $500 or more in income within 12 months prior to the decision. A “source of income” includes a community property interest in the spouse’s or registered domestic partner’s income. Therefore, a person from
whom the official’s spouse or registered domestic partner receives income of $1,000 or more, such that the official’s community property share is $500 or more, may also be a source of a conflict of interest.\textsuperscript{12}

In addition, if the spouse, registered domestic partner or dependent children own 10 percent of more of a business, the official is considered to be receiving “pass-through income” from the business’s clients. In other words, under such circumstances, the business’s clients may be considered sources of income to the official as well.

- **Gifts.** An official has a financial interest in anyone, whether an individual or an organization, who has given gifts to the official that total $460 or more\textsuperscript{13} within 12 months prior to the decision.

- **Personal Finances.** An official has a financial interest in decisions that affect the official’s personal expenses, income, assets, or liabilities, as well as those of the official’s immediate family. This is known as the “personal financial effects” rule.

**Quick Tip:**

Not all of the financial interests that may cause a conflict of interest are disclosed on a Form 700. A good example is an official’s home. It is common for financial effects on an official’s home to trigger a conflict of interest. Officials are not, however, required to disclose their home on the Form 700.\textsuperscript{1}

3. **Consider whether the decision’s effect on the official’s financial interest is reasonably foreseeable and material.**

The next steps all focus on the specific governmental decision in question. At the heart of deciding whether an official has a conflict of interest in a specific decision is determining whether an effect on the financial interest is reasonably foreseeable (might realistically happen or is too remote a possibility) and is material (financially important enough). Determining whether a decision’s effects are foreseeable and material will depend on the nature of the specific decision and the relationship of the official’s interest to the effects of the governmental decisions.
**IS IT REASONABLY FORESEEABLE?**

Is it a realistic possibility that the decision will actually affect the official’s financial interest or is it too remote or theoretical? Two alternative tests answer this question depending on whether an interest is explicitly involved in a decision.

<table>
<thead>
<tr>
<th>An Interest is Explicitly Involved in a Decision If:</th>
<th>Then</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) The interest is a named party in or the subject of a governmental decision, or</td>
<td>It is reasonably foreseeable that the decision will have a material financial effect on the interest.</td>
</tr>
<tr>
<td>2) The decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest, or</td>
<td></td>
</tr>
<tr>
<td>3) The decision affects the real property of the official as described in Regulation 18702.2(a)(1)-(6).</td>
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</table>

<table>
<thead>
<tr>
<th>If Not Explicitly Involved in the Decision</th>
<th>Then</th>
</tr>
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<tbody>
<tr>
<td>All other decisions, other than those above, are considered not explicitly involved in the decision.</td>
<td>If an interest is not explicitly involved in a decision, the financial effect on the interest is reasonably foreseeable only if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to be considered reasonably foreseeable. However, if the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.</td>
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</tbody>
</table>
**Quick Tip:**
For purposes of being vigilant to avoid conflict of interest decisions, keep the general rule in mind – if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.

**IS IT MATERIAL?**

The FPPC has adopted various rules (general and specific) for deciding what kinds of financial effects are important enough to trigger a conflict of interest. Generally, for each of the five interests set forth above, a separate materiality standard exists. The following charts reflect the materiality standards that apply to each type of interest.

**Interests in Business Entities**

(INCLUDING INVESTMENTS IN, EMPLOYMENT OR POSITIONS WITH, OR INCOME FROM BUSINESS ENTITIES)

| If Business Explicitly Involved = Financial Effect Assumed to be Material |
| A material financial effect is assumed if the business: |
| 1) Initiates the proceeding by filing an application, claim, appeal, or request for other government action; |
| 2) Offers to make a sale of a service or a product to the official’s agency; |
| 3) Bids on or enters into a written contract with the official’s agency; |
| 4) Is the named manufacturer in a purchase order of any product purchased by the official’s agency or the sales provider of any products to the official’s agency that aggregates to $1,000 or more in any 12-month period; |
| 5) Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement that the official’s agency is authorized to issue; |
| 6) Is the subject of any inspection, action, or proceeding subject to the regulatory authority of the official’s agency; or |
| 7) Is otherwise subject to an action the official’s agency takes, the effect of which is directed solely at the business entity in which the official has an interest. |

**NOTE:** In all other circumstances, the business is considered not explicitly involved in the decision and the financial effect is not assumed to be material.

| ☇ Not Assumed Material if Business Not Explicitly Involved |
| In all other cases, a financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision’s financial effect would contribute to a change in the price of the entity’s publicly traded stock, or the value of a privately-held business entity. |
**Interests in Real Property**

NOTE: There are different materiality standards depending on whether it is an ownership or leasehold interest.

### Ownership Interests in Real Property

<table>
<thead>
<tr>
<th>A material financial effect is assumed if…</th>
<th>The decision:</th>
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<tbody>
<tr>
<td>1) Involves adopting or amending a general or specific plan, that includes the official’s property;</td>
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</tr>
<tr>
<td>2) Determines the property’s zoning or rezoning, annexation or de-annexation, or inclusion in or exclusion from any city, county, district, or other local government subdivision, or other boundaries (other than a zoning decision applicable to all properties designated in that category);</td>
<td></td>
</tr>
<tr>
<td>3) Imposes, repeals, or modifies any taxes, fees, or assessments that apply to the property;</td>
<td></td>
</tr>
<tr>
<td>4) Authorizes the sale, purchase, or lease of the property;</td>
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</tr>
<tr>
<td>5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the property or any variance that changes the permitted use of, or restrictions placed on it;</td>
<td></td>
</tr>
</tbody>
</table>

**NOTE:** For a financial effect resulting from a governmental decision regarding permits or licenses issued to the official’s business entity when operating on the official’s real property, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead.

6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the property in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official’s jurisdiction or the official will otherwise receive a disproportionate benefit or detriment by the decision.
**Conflicts of Interest**

Unless it is nominal, inconsequential or insignificant, a material financial effect is also assumed if...

The decision:

1) Changes the development potential of the real property;
2) Changes the income-producing potential of the real property;

**NOTE:** If the real property contains a business entity, including rental property, and the nature of the business entity remains unchanged, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead.

3) Changes the highest and best use of the parcel of real property in which the official has a financial interest;
4) Changes the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official’s real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;
5) Affects real property value located within 500 feet of the official’s property line. However, if the real property is commercial property and contains a business entity, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead;\(^{17}\)
6) Causes a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.

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**Leasehold Interests in Real Property** \(^{18}\)

A material financial effect is assumed if...

The decision:

1) Changes the termination date of the lease;
2) Increases or decreases the potential rental value of the property;
3) Increases or decreases the rental value of the property, and official has right to sublease it;
4) Changes the official’s actual or legally allowable use of the real property; or
5) Impacts the official’s use and enjoyment of the real property.
Conflicts of Interest

Sources of Income

NOTE: There are different standards depending if income is for goods and services or the sale of personal or real property.

**Income Received for Goods and Services Provided in the Ordinary Course of Business, including a Salary**

<table>
<thead>
<tr>
<th>A material financial effect is assumed if...</th>
<th>The source of income is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1) A claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;</td>
</tr>
<tr>
<td></td>
<td>2) An individual and the individual will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to those financial interests in Regulation 18702.1 or 18702.2, respectively;</td>
</tr>
<tr>
<td></td>
<td>3) A nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a real property interest in Regulation 18702.2; or</td>
</tr>
<tr>
<td></td>
<td>4) A business entity and the business will be financially affected under the standards applied to a business interest in Regulation 18702.1.</td>
</tr>
</tbody>
</table>

**Income from the Sale of Personal or Real Property of the Official or the Official’s Spouse if Community Property**

<table>
<thead>
<tr>
<th>A material financial effect is assumed if...</th>
<th>The official knows or has reason to know that the source of income:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1) Is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;</td>
</tr>
<tr>
<td></td>
<td>2) Has an interest in a business entity that will be financially affected under the standards applied to a financial interest in Regulation 18702.1; or</td>
</tr>
<tr>
<td></td>
<td>3) Has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.2.</td>
</tr>
</tbody>
</table>
Sources of Gifts\textsuperscript{21}
(Including Gifts from Individuals, Nonprofits, and Business Entities)

<table>
<thead>
<tr>
<th>A material financial effect can be assumed if...</th>
<th>The source is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) A claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;</td>
<td></td>
</tr>
<tr>
<td>2) An individual who will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to those interests in Regulation 18702.1 or 18702.2, respectively;</td>
<td></td>
</tr>
<tr>
<td>3) An nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.5; or</td>
<td></td>
</tr>
<tr>
<td>4) A business entity will be financially affected under the standards in Regulation 18702.1.</td>
<td></td>
</tr>
</tbody>
</table>

Interests in Personal Finances\textsuperscript{22}
(Including the Personal Finances of Immediate Family Members)

| The financial effect is material if... | The official or the official’s immediate family member will receive a measurable financial benefit or loss from the decision unless it is nominal, inconsequential, or insignificant. |

Quick Tip:
There are many rules and many exceptions (so numerous we can’t discuss them all here). At a big picture level, remember:
- In most cases, if the financial interest is directly or explicitly involved in the decision, the materiality standard is met. This is because an interest that is directly or explicitly involved in a governmental decision presents a more obvious conflict.
- On the other hand, if the financial interest is not directly or explicitly involved, the materiality standard is generally based on a reasonable person standard.
4. Consider whether an exception applies.

Once an official has determined that he or she has a conflict of interest in a particular decision, the official can examine if an exception permits the official’s participation despite the conflict. Not all conflicts of interest prevent the official from lawfully taking part in the government decision.

- **The Public Generally Exception:** Even if an official otherwise has a conflict of interest, the official is not disqualified from participating in the decision if the “public generally” exception applies. This public generally exception applies when the financial effect on a public official or the official’s interests is indistinguishable from its effect on the public generally.

  NOTE: The “public generally” exception must be considered with care. An official may not just assume that it applies. There are rules for identifying the specific segments of the general population with which the official must compare the official’s financial interest, and specific rules for deciding whether the financial impact will uniquely affect the public official as compared to the public generally. Again, officials should contact their agency counsel or the FPPC concerning these specific rules.

- **Legally Required to Participate:** Even if an official has a disqualifying conflict of interest, is the participation legally required? In certain rare circumstances, an official may be called upon to take part in a decision despite the fact that the official has a disqualifying conflict of interest. This “legally required participation” rule applies only in certain very specific circumstances in which the government agency would be paralyzed or unable to act. The FPPC or the agency’s counsel must generally make this determination and will instruct the official on how to proceed.

**A conflict of interest exists, what now?**

Once an official determines that they have a conflict of interest and that an exception does not apply, the official must disqualify from all of the following:

- **Making the governmental decision.** A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.
Conflicts of Interest

- **Participating in making the governmental decision.** A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

- **Influencing the governmental decision.** A public official uses his or her official position to influence a governmental decision if he or she: contacts or appears before (1) any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or (2) any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

Certain officials (including city council members, planning commissioners, and members of the boards of supervisors) have a mandated manner in which they must disqualify from a decision. They must publicly identify in detail the interest that creates the conflict, step down from the dais, and must then leave the room. The official must identify the interest following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

If the decision is to take place during a closed session, the identification of the financial interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The financial interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any nonpublic information regarding the decision.

There are limited exceptions that allow a public official to participate even when a conflict is present, such as participating as a member of the general public, speaking to the press, or discussing one’s own governmental employment. The exceptions are limited and fact-specific, and may require advice from the agency’s counsel or the FPPC.

**Final thoughts**

Generally speaking, here are the keys for public officials to meet their obligations under the Act’s conflict of interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, that result from the financial interests of the decision-makers.

- Learn to spot potential trouble early. Understand which financial interests could give rise to a conflict of interest.
Conflicts of Interest

- Understand the “big picture” of the rules. For example, know why the rules distinguish between explicitly involved interests, and why the public generally exception exists.

- Realize the importance of the facts. Deciding whether an official has a disqualifying conflict of interest depends just as much - if not more - on the facts of the particular situation as it does on the law.

- Don’t try to memorize all of the specific conflict of interest rules. The rules are detailed, and the penalties for violating them are significant. Rather, look the rules up or ask about the particular rules applicable to a given case.

- Ask for advice. It is available from the agency’s legal counsel and from the FPPC.

Where to go for help?

<table>
<thead>
<tr>
<th>Email Advice (informal)</th>
<th><a href="mailto:advice@fppc.ca.gov">advice@fppc.ca.gov</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>Written Advice (formal and informal)</td>
<td>Fair Political Practices Commission</td>
</tr>
<tr>
<td></td>
<td>428 J Street, Suite 620</td>
</tr>
<tr>
<td></td>
<td>Sacramento, CA 95814</td>
</tr>
</tbody>
</table>
Conflicts of Interest

1 The Political Reform Act is contained in Government Code §§ 81000 - 91014, and all statutory references are to this code. The FPPC regulations are contained in §§ 18110 - 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

2 Enacted through Proposition 9 at the June 4, 1974 Primary Election.

3 § 81001.

4 § 87100.

5 Witt v. Morrow (1977) 70 Cal. App. 3d 817 at 822–823: “Morrow asserts it is unconstitutional to automatically disqualify a public official from participating in decisions which may affect the investments of an entity which pays him .... However, the whole purpose of the Political Reform Act of 1974 is to preclude a government official from participating in decisions where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is also employed.”

6 § 82048.

7 § 83115.

8 § 81002(c).

9 § 87103.

10 Under § 87103, an official has an "indirect interest" in real property owned by a business entity or trust in which the official, the official's immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater.

11 § 82033.

12 § 82030.

13 The Commission adjusts the gift threshold on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index.

14 Regulation 18701.

15 Regulation 18702.1

16 Regulation 18702.2(a).

17 Particular facts can rebut this presumption depending on advice given by the FPPC.

18 Regulation 18702.2(b).

19 Regulation 18702.3(a).

20 Regulation 18702.3(b).

21 Regulation 18702.4.

22 Regulation 18702.5.

23 Regulation 18703.

24 § 87101 and Regulation 18705.

25 Regulation 18704.

26 § 87105 and Regulation 18707 applicable to persons holding positions specified in § 87200.
Guide to the Ralph M. Brown Act
AGENDA ITEM

1. PUBLIC COMMENT: The City Council values your comments; however, pursuant to the Brown Act, Council cannot take action on items not listed on the posted agenda. The public comment period is limited to 20 minutes, with 2 minutes allotted for each speaker. This public comment period is to address the City Council on Consent Calendar items, other agenda items (if the member of the public cannot be present at the time the item is considered) or items of genera...

CURRENT SPEAKER: Larry Block
ACKNOWLEDGEMENTS

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

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- Michael Jenkins, Committee Chair
  City Attorney, Hermosa Beach, Rolling Hills and West Hollywood
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- Damien Brower
  *City Attorney, Brentwood*
- Ariel Pierre Calonne
  *City Attorney, Santa Barbara*
- Veronica Ramirez
  *Assistant City Attorney, Redwood City*
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Open & Public V
A GUIDE TO THE RALPH M. BROWN ACT
REVISED APRIL 2016

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IT IS THE PEOPLE’S BUSINESS

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The right of access

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

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

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

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

“The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”

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

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

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

Broad coverage

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

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body
discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

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

**Narrow exemptions**

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

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

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

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

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

**Public participation in meetings**

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

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

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

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

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

Beyond the law — good business practices

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

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

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

- A legislative body’s need to get its business done smoothly;
- The public’s right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency’s right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.
An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

**Achieving balance**

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

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

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

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

**Historical note**

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

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

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

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

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

1 California Government Code section 54950
2 California Constitution, Art. 1, section 3(b)(1)
3 California Government Code section 54953(a)
4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State’s Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).
5 California Government Code section 54952.2(b)(2) and (c)(1); Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533
6 California Government Code section 54953.7

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengovernment. A current version of the Brown Act may be found at www.leginfo.ca.gov.
Chapter 2

LEGISLATIVE BODIES

What is a “legislative body” of a local agency? ................................................................. 12

What is not a “legislative body” for purposes of the Brown Act? ............................... 14
The Brown Act applies to the legislative bodies of local agencies. It defines “legislative body” broadly to include just about every type of decision-making body of a local agency.1

What is a “legislative body” of a local agency?

A “legislative body” includes:

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

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

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

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

- Appointed bodies — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the
Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.8

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.9 Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee “shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.10 “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.11

- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.12 These include some nonprofit corporations created by local agencies.13 If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.14 When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.15

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

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

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

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

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

**PRACTICE TIP:** It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee’s charge, or whether the committee exists long enough to have “continuing jurisdiction.”
first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.16

What is not a “legislative body” for purposes of the Brown Act?

- A temporary advisory committee composed solely of less than a quorum of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.17 Temporary committees are sometimes called ad hoc committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.18

- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.19

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

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

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

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

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.20

- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.21

- County central committees of political parties are also not Brown Act bodies.22

ENDNOTES:

1 Taxpayers for Livable Communities v. City of Malibu (2005) 126 Cal.App.4th 1123, 1127
California Government Code section 54952(a) and (b)

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

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


California Government Code section 54952.1


California Government Code section 54952(b)


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


California Government Code section 54952(d)

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


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Chapter 3

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Chapter 3

MEETINGS

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

Brown Act meetings

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

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

Six exceptions to the meeting definition

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

Individual Contacts

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

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.
Conferences
The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

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

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

“I see we have four distinguished members of the city council at our meeting tonight,” said the chair of the Environmental Action Coalition. “I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?”

The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.

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

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

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

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

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?
A. No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.

Q. The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?
A. Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.

Standing Committees

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

Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?
A. She may attend, but only as an observer; she may not participate.
Social or Ceremonial Events
The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

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

Grand Jury Testimony
In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury. This is the equivalent of a seventh exception to the Brown Act’s definition of a “meeting.”

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

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

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

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

Serial meetings
One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that “[a] majority of the members of a legislative body shall not, outside a meeting ... use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.” The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.
The serial meeting may occur by either a “daisy chain” or a “hub and spoke” sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body’s subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one-by-one for discussion, deliberation, or a decision on a proposed action. Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members’ respective views is revealed. Each of these scenarios violates the Brown Act.

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

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

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

The phone call was from a lobbyist. “Say, I need your vote for that project in the south area. How about it?”

“Well, I don’t know,” replied Board Member Aletto. “That’s kind of a sticky proposition. You sure you need my vote?”

“Well, I’ve got Bradley and Cohen lined up and another vote leaning. With you I’d be over the top.”

Moments later, the phone rings again. “Hey, I’ve been hearing some rumbles on that south area project,” said the newspaper reporter. “I’m counting noses. How are you voting on it?”

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating
a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members’ positions by asking “You sure you need my vote?” The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

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

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

“Thanks for the information,” said Council Member Kim. “These zoning changes can be tricky, and now I think I’m better equipped to make the right decision.”

“Glad to be of assistance,” replied the planning director. “I’m sure Council Member Jones is OK with these changes. How are you leaning?”

“Well,” said Council Member Kim, “I’m leaning toward approval. I know that two of my colleagues definitely favor approval.”

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

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

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

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

A. No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.
Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the “reply to all” button that may inadvertently result in a Brown Act violation.

**Informal gatherings**

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

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

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

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

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

**Technological conferencing**

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

“Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either
In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:

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

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

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

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

Location of meetings

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

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

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

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

A. Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.
Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;

Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;

Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;

Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or

Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.25

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

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

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

1 California Government Code section 54952.2(a)
3 California Government Code section 54954(a)
4 California Government Code section 54956
5 California Government Code section 54956.5
6 California Government Code section 54955
7 California Government Code section 54952.2(c)
8 California Government Code section 54952.2(c)(4)
9 California Government Code section 54952.2(c)(6)
10 California Government Code section 54953.1
12 California Government Code section 54952.2(b)(1)
13 Stockton Newspaper Inc. v. Redevelopment Agency (1985) 171 Cal.App.3d 95
14 California Government Code section 54952.2(b)(2)
16 Roberts v. City of Palmdale (1993) 5 Cal.4th 363
17 California Government Code section 54957.5(a)
18 California Government Code section 54952.2(b)(2)
20 California Government Code section 54953(b)(1)
21 California Government Code section 54953(b)(4)
22 California Government Code section 54953
23 California Government Code section 54954(b)
24 California Government Code section 54954(b)(1)-(7)
26 California Government Code section 54954(c)
27 California Government Code section 54954(d)
28 California Government Code section 54954(e)

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Chapter 4
AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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

**Agendas for regular meetings**

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

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

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

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

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

Q. The agenda for a regular meeting contains the following items of business:
• Consideration of a report regarding traffic on Eighth Street; and
• Consideration of contract with ABC Consulting.

Are these descriptions adequate?

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

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

Is this permissible?

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

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

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

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

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

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

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

Notices and agendas for adjourned and continued meetings and hearings

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

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

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice. 16 News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.
News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

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

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

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

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

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.22 As a practical matter, the Constitution’s notice requirements have preempted this section of the Brown Act.
CHAPTER 4: AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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

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

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

“I’d like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project,” said Chair Lopez.

“It’s not on the agenda. But we learned two days ago that we finished phase one of schedule — believe it or not — and I’d like to keep it that way. Do I hear a motion?”

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

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

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

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

Responding to the public
The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?
While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body’s rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities. However, caution should be used to avoid any discussion or action on such items.

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

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

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

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

The right to attend and observe meetings

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

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

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

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.
Action by secret ballot, whether preliminary or final, is flatly prohibited.

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

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

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

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

Records and recordings

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

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

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

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

A: Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.
A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location. A writing distributed during a meeting must be made public:

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

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

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

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

The public’s place on the agenda

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

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

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

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.
Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

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

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

A. There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.

The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers’ viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.

Endnotes:

1 California Government Code section 54954.2(a)(1)
4 California Government Code sections 54954.2(a)(1) and 54954.2(d)
5 California Government Code section 54960.1(d)(1)
9 California Government Code section 54954.2(a)(1)
10 San Joaquin Raptor Rescue v. County of Merced (2013) 216 Cal.App.4th 1167 (legislative body’s approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)
11 California Government Code section 54954.1
12 California Government Code sections 54956(a) and (c)
13 California Government Code section 54955
14 California Government Code section 54954.2(b)(3)
15 California Government Code section 54955.1
16 California Government Code section 54956.5
17 California Government Code section 54952.3
18 Education Code sections 35144, 35145 and 72129
20 California Education Code section 35145.5
21 California Government Code section 54954.6
22 See Cal.Const.Art.XIIIIC, XIID and California Government Code section 54954.6(h)
23 California Government Code section 54954.2(b)
24 California Government Code section 54954.2(a)(2)
25 California Government Code section 54953.3
26 California Government Code section 54961(a); California Government Code section 11135(a)
27 California Government Code section 54952.2(c)(2)
28 California Government Code section 54953(b)
29 California Government Code section 54953(c)
30 California Government Code section 54953(c)(2)
31 California Government Code section 54957.9.
32 Norse v. City of Santa Cruz (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); Acosta v. City of Costa Mesa (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption).
33 California Government Code section 54957.9
34 California Government Code section 54957.5
35 California Government Code section 54957.5(d)
36 California Government Code section 54957.5(b)
37 California Government Code section 54957.5(c)
38 California Government Code section 54953.5(b)
39 California Government Code section 54957.5(d)
40 California Government Code section 54953.5(a)
41 California Government Code section 54953.6
42 California Government Code section 54954.3(a)
43 California Government Code section 54954.3(c)
45 California Government Code section 54954.3(a)
46 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengovernment. A current version of the Brown Act may be found at www.leginfo.ca.gov.
Chapter 5

CLOSED SESSIONS

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A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.  

As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed. The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city’s position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.  

In this chapter, the grounds for convening a closed session are called “exceptions” because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements), the Brown Act does not authorize closed sessions for other contract negotiations.  

Agendas and reports  
Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption. An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings. 

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a “safe harbor” from legal attacks. These sample
agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor’s Office.7

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.8

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.9 The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.10

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential “minute book” be kept to record actions taken at closed sessions.11 If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.12 A court may order the disclosure of minute books for the court’s review if a lawsuit makes sufficient claims of an open meeting violation.

Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.13

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.14 The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body’s conferring with its own legal counsel and required support staff.15 For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.16

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.
The California Attorney General has opined that if the agency’s attorney is not a participant, a litigation closed session cannot be held. In any event, local agency officials should always consult the agency’s attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.

**Existing litigation**

Q. May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?

A. Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.

**Anticipated exposure to litigation against the local agency**

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on “existing facts and circumstances” as defined by the Brown Act. The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the “existing facts and circumstances” must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

**Anticipated initiation of litigation by the local agency**

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency’s rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed session.
session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person. Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

**Real estate negotiations**

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body’s negotiator on price and terms of payment. Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.

**Q.** May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

**A.** No. However, there are differing opinions over the scope of the phrase “price and terms of payment” in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of “price and terms of payment.” Others take a narrower, more literal view of the phrase.

The agency’s negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern and the names of the parties with whom its negotiator may negotiate.

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.

"Our population is exploding, and we have to think about new school sites,” said Board Member Jefferson.

"Not only that,” interjected Board Member Tanaka, “we need to get rid of a couple of our older facilities.”

"Well, obviously the place to do that is in a closed session,” said Board Member O’Reilly. “Otherwise we’re going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar.”

* A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.
CHAPTER 5: CLOSED SESSIONS

Public employment

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.” The purpose of this exception — commonly referred to as the “personnel exception” — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies. The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception. That authority may be delegated to a subsidiary appointed body.

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses, and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session. The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session. If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.

Q. Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?
A. No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee. An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, “employee” specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. Examples of the latter include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception. Action on individuals who are not “employees” must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.
The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

Reclassification of a job must be public, but an employee’s ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position. However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.

“I have some important news to announce,” said Mayor Garcia. “We’ve decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we’ve negotiated six months severance pay.”

“Unfortunately, that has some serious budget consequences, so we’ve had to delay phase two of the East Area Project.”

This may be an improper use of the personnel closed session if the council agenda described the item as the city manager’s evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members, on employee salaries and fringe benefits for both represented (“union”) and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an “employee” includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

PRACTICE TIP: The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.
During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations. The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation. The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

**Labor negotiations — school and community college districts**

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.

Public participation under the Rodda Act also takes another form. All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member. The final vote must be in public.

**Other Education Code exceptions**

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student’s parent or guardian may request an open meeting.

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous. Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.

**Joint Powers Authorities**

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.
License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant’s attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.51

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public’s right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.52 Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.53 The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.54

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.55

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.

2. A meeting to discuss “reports involving trade secrets” — provided no action is taken.

A “trade secret” is defined as information which is not generally known to the public or competitors and which: 1) “derives independent economic value, actual or potential” by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district’s dissolution.56
CHAPTER 5: CLOSED SESSIONS

Other legislative bases for closed session
Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits, consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds, hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services, discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment, and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.

Who may attend closed sessions
Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?
A. No, attendance in closed sessions is reserved exclusively for the agency’s advisors.

The confidentiality of closed session discussions
The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality. It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process. Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.
Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information received during a closed session regarding pending litigation, though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions. In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.

The interplay between these possible sanctions and an official’s first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

“I want the press to know that I voted in closed session against filing the eminent domain action,” said Council Member Chang.

“Don’t settle too soon,” reveals Council Member Watson to the property owner, over coffee. “The city’s offer coming your way is not our bottom line.”

The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly. The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.
ENDNOTES:

1 California Government Code section 54962
2 California Constitution, Art. 1, section 3
3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).
4 California Government Code section 54957.1
5 California Government Code section 54954.5
6 California Government Code section 54954.2
7 California Government Code section 54954.5
8 California Government Code sections 54956.9 and 54957.7
9 California Government Code section 54957.1(a)
10 California Government Code section 54957.1(b)
11 California Government Code section 54957.2
13 Roberts v. City of Palmdale (1993) 5 Cal.4th 363
14 California Government Code section 54956.9; Shapiro v. Board of Directors of Center City Development Corp. (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
18 California Government Code section 54956.9(g)
20 Government Code section 54956.9(e)
21 California Government Code section 54957.1
22 California Government Code section 54956.8
23 Shapiro v. San Diego City Council (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).
25 California Government Code sections 54956.8 and 54954.5(b)
26 California Government Code section 54957.1(a)(1)
27 California Government Code section 54957(b)
31 California Government Code section 54957(b)(3)
34 California Government Code section 54957(b); but see Bollinger v. San Diego Civil Service Commission (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).
36 Moreno v. City of King (2005) 127 Cal.App.4th 17
37 California Government Code section 54957
39 California Government Code section 54957.1(a)(5)
40 California Government Code section 54957.6
41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not “employees” of the district).
43 California Government Code section 54957.1(a)(6)
44 California Government Code section 3549.1
45 California Government Code section 3540
46 California Government Code section 3547
48 California Education Code section 72122
49 California Education Code section 60617
50 California Government Code section 54956.96
51 California Government Code section 54956.7
52 California Government Code section 54957
54 California Government Code section 54957.8
55 California Government Code section 54962
56 California Health and Safety Code section 32106
57 California Government Code section 54956.75
58 California Government Code section 54956.81
59 California Government Code section 54956.86
60 California Government Code section 54956.87
61 California Government Code section 54956.95
CHAPTER 5: CLOSED SESSIONS

64 Government Code section 54963


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


69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

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# Chapter 6

## REMEDIES

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Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials’ interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.1 Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;2
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written “cure or correct” demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendized items are acted on by the governing body during a meeting.3 The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.
Although just about anyone has standing to bring an action for invalidation, the challenger must show prejudice as a result of the alleged violation. An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.

**Applicability to Past Actions**

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action. Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body, clearly describing the past action and the nature of the alleged violation. The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action. If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.

The legislative body’s unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar. The unconditional commitment must be substantially in the form set forth in the Brown Act. No legal action may thereafter be commenced regarding the past action. However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.

**Civil action to prevent future violations**

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

**PRACTICE TIP:** A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.
It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice. Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

**Costs and attorney’s fees**

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act’s civil remedies may seek court costs and reasonable attorney’s fees. Courts have held that attorney’s fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust. When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney’s fees will be awarded against the agency if a violation of the Act is proven.

An attorney’s fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney’s fees if the court finds the lawsuit was clearly frivolous and lacking in merit.

**Criminal complaints**

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.

“Action taken” is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision. If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision. In fact, criminal liability is triggered by a member’s participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member “to deprive the public of information to which the member knows or has reason to know the public is entitled” by the Brown Act.
As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies’ adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.25 There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.26

Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

ENDNOTES:

1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54956.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.


3 California Government Code section 54960.1 (b) and (c)(1)


6 Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109, 1116-17, 1118

7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)

8 Government Code Sections 54960.2(a)(1), (2)

9 Government Code Section 54960.2(b)
10 Government Code Section 54960.2(a)(4)
11 Government Code Section 54960.2(c)(2)
12 Government Code Section 54960.2(c)(1)
13 Government Code Section 54960.2(c)(3)
14 Government Code Section 54960.2(d)
15 Government Code Section 54960.2(e)
18 Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein
19 California Government Code section 54960.5
20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
21 California Government Code section 54959
22 California Government Code section 54952.6
24 California Government Code section 54959
25 California Government Code section 1222 provides that “[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.”
26 The principle of statutory construction known as expressio unius est exclusio alterius supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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Article VIII of the City Charter (Commissions, Committees and Agencies)
ARTICLE VIII. COMMISSIONS, COMMITTEES AND AGENCIES

Section 800. In general.
The commissions and committees heretofore established by the Council shall continue to exist and exercise the powers and perform the duties conferred upon them; provided, however, that the Council may abolish any and all of said commissions and committees and may alter the structure, membership, powers and duties thereof.
In addition, the Council may create such other agencies as in its judgment are required and may grant to them such powers and duties as are not inconsistent with the provisions of this Charter.

Section 801. Appropriations.
The Council shall include in its annual budget such appropriations of funds as the Council shall determine to be sufficient for the efficient and proper functioning of commissions, committees and agencies.

Section 802. The appointment, removal, terms of office and procedural rules.
The election, appointment, removal, and terms of office of commissions, committee and agency members and the rules and regulations pertaining to the conduct of commission, committee or agency business shall be as prescribed by ordinance or resolution of the City Council.

Section 803. Existing membership.
The members of the commissions and committees holding office when this Charter takes effect shall continue to hold office thereafter until their respective terms of office shall expire and until their successors are appointed and qualify, subject to being removed from office as provided herein.

Section 804. Compensation. Vacancies.
The members of commissions and agencies shall receive such compensation as may be specified by the Council and shall also receive reimbursement for necessary traveling and other expenses incurred on official duty when such expenditures are authorized by the Council.
Municipal Code, Title I, Division 4 (Commissions and Committees)
Division 4 COMMISSIONS AND COMMITTEES*

*Cross references: Administrative services, tit. 2; Irvine Public Facilities and Infrastructure Authority, § 2-7-608 et seq.; Community Services Commission, § 3-3-101 et seq.; Disaster Council, § 4-9-103; Planning Commission, § 5-3-101 et seq.; Subdivision Committee, § 5-5-104; Building Appeals Board Committee, § 5-9-216; Irvine Transportation Authority, § 6-3-401 et seq.

CHAPTER 1. IN GENERAL

Sec. 1-4-101. Applicability.
The provisions of this division are applicable to all commissions and committees appointed by or otherwise operating under authority of the City Council or its delagee.
(Res. No. 396, § 1, 3-11-75; Code 1976, § I.F-101)

Sec. 1-4-102. General statement of policy.
A. The City Council, in prescribing the provisions of this division, hereby states its recognition of the enormous value of direct, active participation by citizens in their government, and of the willing, capable assistance citizens have demonstrated a desire to render toward the operation and development of their own community. The Council hereby further states its recognition of the value and equity in receiving help and advice in such regard from persons who are not residents of the community, but have a just and legitimate interest in its affairs.
B. These rules shall be interpreted to further the intent of the Council that citizen judgment, expertise and effort be given fair, reasonable and efficient channels to reach and benefit the government of the City.
(Res. No. 396, § 2, 3-11-75; Code 1976, § I.F-102)

Sec. 1-4-103. Eligibility.
Any person, whether or not a resident of the City, shall be eligible to serve on committees; but only residents of the City shall be eligible to serve on commissions unless the unanimous approval of the City Council is obtained. Any person appointed to or selected for a commission or committee in conformity with these rules and regulations shall be a voting member thereof. As used in this rule, a resident of the City is any person eligible to register to vote in municipal elections.
(Res. No. 396, § 5.1, 3-11-75; Code 1976, § I.F-103; Ord. No. 86-15, § 1, 9-9-86)

Sec. 1-4-104. Application of State law.
All commissions and committees shall be subject to those sections of the California Government Code known as the "Ralph M. Brown Act," and shall conduct their business in conformity therewith.
(Res. No. 396, § 5.2, 3-11-75; Code 1976, § I.F-104)
Sec. 1-4-105. Public statements.
No commission or committee shall make a financial commitment, a political or other endorsement, or a statement of position on legislation pending before any governmental body, federal, State or local, without first securing the express consent of the City Council. Nothing in these rules and regulations shall be construed, however, to inhibit or forbid political or other activity, in a purely individual capacity, by any member of a commission or committee, so long as such member does not purport to speak for, or as a member of, such commission or committee.
(Res. No. 396, § 5.3, 3-11-75; Code 1976, § I.F-105)
Sec. 1-4-106. Reserved.

Sec. 1-4-107. Reports; dissents.
When any commission or committee submits a report or recommendation to another agency of the City, dissenting members shall be entitled to have their viewpoints fully, fairly and accurately presented as a part thereof.
(Res. No. 396, § 5.4, 3-11-75; Code 1976, § I.F-106)

Sec. 1-4-108. Subcommittees.
The provisions of sections 1-4-103 through 1-4-105 and section 1-4-107 shall also apply to subcommittees of commissions and committees and their members.
(Res. No. 396, § 5.5, 3-11-75; Code 1976, § I.F-107)

CHAPTER 2. COMMISSIONS

Sec. 1-4-201. Creation.
Commissions may be created only by resolution or ordinance of the City Council, and shall be terminated only by express ordinance of the City Council. They shall be continuing bodies operating in general areas of concern and having the power and duties designated by the City Council. They may be assigned more than one task concurrently, but the absence of one or more assigned tasks at any time (or the completion of and submission of a report regarding all their assigned tasks) shall not affect their continuing status.
(Res. No. 396, § 3.1, 3-11-75; Code 1976, § I.F-201)

Sec. 1-4-202. Appointment.
The number of persons appointed from time to time to any commission shall be fixed by the City Council in the resolution or ordinance establishing the commission. Members of commissions shall be appointed at least ten days prior to the first regularly scheduled meeting of such commission in January of each calendar year. The commissioner shall be appointed as follows, unless otherwise provided in the ordinance or resolution establishing the commission:
A. Each member of the City Council shall appoint one commissioner who shall serve at the pleasure of the member of the City Council who appointed such commissioner; and
B. Such appointment shall be made by filing a written statement with the City Clerk setting forth:
1. The fact of such appointment;
2. The name of the person being appointed; and
3. The date as of which such appointment is to be effective.
(Res. No. 396, § 3.2, 3-11-75; Code 1976, § I.F-202; Ord. No. 236, § 3, 3-13-79; Ord. No. 92-17, § 10, 9-22-92)
Sec. 1-4-203. Term.

Any councilmember-appointed commissioner serves at the will of that councilmember for a term expiring upon the expiration of the councilmember's term; provided that a commissioner's term shall terminate on the date either that the commissioner resigns from office or that the councilmember replaces the commissioner prior to the expiration of the commissioner's term.

(Res. No. 396, § 3.3, 3-11-75; Code 1976, § I.F-203; Ord. No. 99-06, § 1, 2-23-99)

Sec. 1-4-204. Removal.

A member of a commission may be discharged from his or her position and duties at any time, and without cause, by the member of the Council who appointed such commissioner by their filing with the City Clerk a written statement setting forth:

A. The facts of such removal;
B. The name of the person being removed; and
C. The date such removal is to be effective.

(Res. No. 396, § 3.3, 3-11-75; Code 1976, § I.F-204)

Sec. 1-4-205. Officers.

Each commission shall have a chair and vice chair, each of whom shall be members of the commission. Such officers shall be elected by the membership of the commission at their first regular meeting in January of each calendar year.

(Res. No. 396, § 3.4, 3-11-75; Code 1976, § I.F-205; Ord. No. 83-19, § 1, 12-13-83; Ord. No. 92-17, § 11, 9-22-92)

Sec. 1-4-206. Reserved.

Sec. 1-4-207. Meetings.

The commission shall meet at such times as may be established by the City Council. All meetings shall be opened to the public and shall conform to the provisions of the "Ralph M. Brown Act." Special meetings may be called by the chair of the commission or upon the written request of at least a majority of its members.

(Res. No. 396, § 3.5, 3-11-75; Code 1976, § I.F-206)

Sec. 1-4-208. Procedures.

A. Unless otherwise specifically provided by law, Robert's Rules of Order, Newly Revised, shall govern the general conduct of meetings of commissions. The adoption of Robert's Rules of Order is for the purpose of establishing a procedural framework for the conduct of meetings only. Any failure to adhere thereto shall in no way affect the validity of any action taken by the commission.

B. It shall be the duty of each commissioner to take an active part in the commission's deliberation and to act in whatever capacity the commissioner may be called. Absence from three consecutive meetings without the formal consent of the commission shall be deemed to constitute the retirement of the commissioner, and the position shall automatically become vacant.

(Res. No. 396, § 3.6, 3-11-75; Code 1976, § I.F-207)

Sec. 1-4-209. Quorum; commission voting.

A majority of the members of the commission shall constitute a quorum. A majority vote of the members present at a duly constituted meeting shall be required to carry a motion, proposal, or resolution. All official members present shall vote on every question presented to the commission. Under no circumstances shall any member of the commission take any action or make any statement committing the commission as a whole unless expressly authorized to do so by vote of the commission.

(Res. No. 396, § 3.7, 3-11-75; Code 1976, § I.F-208)
Sec. 1-4-210. Duties.  
Commissions shall from time to time, receive specific assignments from the City Council. In addition, commissions may generate tasks, on their initiative, within their general areas of concern, subject to coordination with the City Manager, or his or her delegate, to avoid duplication of effort or, jurisdiction with other commissions or committees and to confirm that the proposed task is, in fact, within the commission's area of concern. Where tasks are assigned to a commission by the City Council, a written report regarding the results thereof and recommendations where appropriate, should be furnished, upon completion of such task, to the City Council.  
(Res. No. 396, § 3.8, 3-11-75; Code 1976, § I.F-209)

Sec. 1-4-211. Power of appointment.  
Commissions shall have power to appoint subcommittees of their own members and to appoint committees (as hereinafter defined) to perform tasks within their respective general areas of concern, but only in conformity with the provisions of this division.  
(Res. No. 396, § 3.9, 3-11-75; Code 1976, § I.F-210)

Sec. 1-4-212. Reserved.

Sec. 1-4-213. Additional regulations.  
Commissions may adopt a resolution establishing additional regulations governing the conduct of its meetings provided such regulations are not in conflict with the rules and regulations herein established and further provided that such resolution shall be approved by the City Council.  
(Res. No. 396, § 3.10, 3-11-75; Code 1976, § I.F-211)

CHAPTER 3. COMMITTEES

Sec. 1-4-301. General.  
Committees may be established from time to time to perform one or more specific assigned tasks. Committees may be appointed and tasks assigned by the City Council or a commission (but, in the case of a commission, only for the purpose of performing specific tasks within the respective general areas of concern of the commission). Upon completion of an assigned task, the committee shall forward a written report regarding the results thereof to the assigning authority, together with recommendations where appropriate. Upon submission of its report, and formal acceptance thereof by the assigning authority, the committee (unless it then has one or more other specifically assigned tasks which it has not completed) is automatically dissolved.  
(Res. No. 396, § 4.1, 3-11-75; Code 1976, § I.F-301)

Sec. 1-4-302. Structure.  
The structure, composition, number of members, manner of their appointment or selection, and other matters necessary to the creation and operation of each committee shall be determined in each case by the authority which establishes such committee, subject, however, to compliance with this division.  
(Res. No. 396, § 4.2, 3-11-75; Code 1976, § I.F-302)
Sec. 1-4-303. Establishment; consultation with City Manager.

No committee shall be established without prior consultation between the City Manager, or his or her delegate, and the authority proposing to establish such committee.

A. To determine that such committee's proposed assignment or assignments will not substantially duplicate an assignment of another committee already in existence, or a task on which a commission is then engaged; and

B. If the authority proposing to establish the committee is a commission, to determine that the proposed assignment or assignments are within the general area of concern of the commission. Where a proposed assignment is closely or logically related to work already assigned to an existing committee, then, unless exceptional circumstances justify a new committee, such assignment shall be given to the already-existing committee.

(Res. No. 396, § 4.3, 3-11-75; Code 1976, § I.F-303)

Sec. 1-4-304. Appointments.

Committees may appoint their own subcommittees, but only from their own membership. A committee shall not, however, assign to a subcommittee any matter not directly related to the specific assignment or assignments given to that committee by an appropriate authority under these rules and regulations. No committee shall generate its own assignments or tasks.

(Res. No. 396, § 4.4, 3-11-75; Code 1976, § I.F-304)
Municipal Code Sections 1-6-101 through 1-6-110
(Code of Ethics)
**Division 6  CODE OF ETHICS**

**Sec. 1-6-101. Declaration of policy.**
A. The proper operation of democratic government requires that public officials and public employees be independent, impartial, responsible, and accountable to the people; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office and public employment not be used for personal gain; and that the citizens and businesses of the City have confidence in the integrity of their government.

B. As used in this division, "City officials and employees" shall mean and include the following individuals: the Mayor; the Mayor Pro Tem; members of the City Council; City Council Executive Assistants; the City Manager; Assistant City Managers; the City Clerk; Department Directors; Deputy Department Directors; the Police Chief; the Deputy Police Chief, the City Attorney; the Zoning Administrator; and members of the Planning Commission, the Community Services Commission, the Finance Commission, and any other commission that is advisory in nature.

C. The following principles are intended to encourage the highest standard of conduct to serve as guidelines for ethical behavior:
1. **Public interest.** Public office and public employment is a trust to be used to advance the public interest, and not to be used for personal gain.
2. **Objective judgment.** Decisions are to be made on the merits, free of partiality or prejudice, and unimpeded by conflicts of interest.
3. **Accountability.** Government is to be conducted openly, efficiently, equitably, and honorably so the public can make informed judgments and hold public officials accountable.
4. **Democracy.** City officials and employees shall demonstrate honor and respect for democratic principles, and observe the letter and spirit of laws.
5. **Public trust.** City officials and employees shall safeguard public confidence in the integrity of government by upholding the highest standards of personal and professional conduct.
6. **Professional conduct.** City officials and employees shall support the maintenance of a positive and constructive workplace environment and demonstrate a high degree of professionalism when dealing with citizens. The Mayor is charged with maintaining order and decorum during public meetings in accordance with Robert's Rules of Order. Subject to the limitations provided in California Government Code Section 54954.3(c), a provision of the Brown Act, City officials and employees are encouraged to conduct themselves in a manner that is responsive, respectful and befitting their public position.

D. The purpose of this division is to establish ethical standards of conduct for City officials and employees by setting forth those acts or actions that are incompatible, inconsistent, or in conflict with the foregoing principles and the best interests of the City.
(Ord. No. 06-01, § 1, 1-24-06)

**Sec. 1-6-102. Responsibilities of public office and employment.**
City officials and employees are agents of public purpose and hold office or employment for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of the State of California, and to carry out impartially the laws of the nation, State and the City, and thus to foster respect for all governments. They shall make their decisions and take their actions fairly and impartially and base them on the merits and substance of each matter. They are bound to observe in their official acts, the highest standards of performance and to discharge faithfully the
duties of their office and employment, regardless of personal considerations. Recognizing that the public interest must be their primary concern, their conduct in both their official and private affairs should be above reproach.

(Ord. No. 06-01, § 1, 1-24-06)

Sec. 1-6-103. No preferential treatment.
A. City officials and employees shall not accept more favorable treatment than other residents of the City. Any transactions should be obtained on terms consistent with those available to the general public.
B. All citizens and businesses in the City are entitled to fair and equal treatment. City officials and employees shall not give preferential consideration or special advantages to any person or organization beyond those that are available to any other person or organization.

(Ord. No. 06-01, § 1, 1-24-06)

Sec. 1-6-104. City allegiance and proper conduct.
A. Incompatible employment or service. Because of their uniquely important, visible, and elevated status and responsibilities as elected officials, the Mayor and members of the City Council, and by extension their Executive Assistants, shall not engage in compensated employment or service for the purpose of lobbying for any private person or organization before any local agency (county, city or special district) located in the County of Orange.
1. This paragraph A shall not be applicable to lobbying as an in-house employee on behalf of his or her employer (as opposed to a client of the employer).
2. For purposes of this paragraph A, "lobbying" shall mean any oral or written communication (including an electronic communication) to an official of a local agency other than the City, made directly or indirectly, in an effort to influence or persuade the official to favor or oppose, recommend or not recommend, vote for or against, or take or refrain from taking action on any public policy issue of a discretionary nature pending before the official's agency, including but not limited to proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids, including the adoption of specifications, awards, grants, or contracts.
3. Notwithstanding any other provision of this division, this paragraph A shall not become effective until January 1, 2007.
B. Interest in City contracts. City officials and employees shall not have a personal investment or monetary interest in any contract made by the City, except contracts relating to the performance of their official City duties.

(Ord. No. 06-01, § 1, 1-24-06)

Sec. 1-6-105. Disclosure of confidential information.
City officials and employees shall respect and maintain the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information or records without proper and legally required authorization, nor use such information or records to advance their personal, financial or other private interests, or the private gain or advantage of others. Public records may be requested through the City Clerk/Office of Records and Information consistent with the rights of citizens under the California Public Records Act.

(Ord. No. 06-01, § 1, 1-24-06)
Sec. 1-6-106. Use of City resources.
City officials and employees shall not use City-owned equipment, automobiles, trucks, instruments, tools, supplies, machines, including computers and related computer systems, or any other item that is the property of the City for other than City business, nor shall City officials and employees allow any unauthorized person or organization to rent, borrow or use any such City resources.
(Ord. No. 06-01, § 1, 1-24-06)

Sec. 1-6-107. Future employment.
A. General prohibitions. It shall be improper for City officials and employees, for a period of two years following the termination of their office or employment, to:
1. Represent, appear or lobby before any City agency, official or employee for compensation on behalf of any person or any organization. For purposes of this paragraph A, "lobby" shall mean making any oral or written communication (including an electronic communication) to an official of the City, made directly or indirectly, in an effort to influence or persuade the official to favor or oppose, recommend or not recommend, vote for or against, or take or refrain from taking action on any public policy issue of a discretionary nature pending before the City, including but not limited to proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids, including the adoption of specifications, awards, grants, or contracts.
2. Accept employment or otherwise receive compensation from a person or organization that entered into a contract with the City within one year prior to the termination of the office or employment, where the former official or employee personally and substantially participated in the award of the contract.
3. Participate as a competitor in any competitive selection process for a City contract where the former official or employee recommended or approved the project or the work that is the subject of the contract, nor shall any City contract be awarded to such a former official or employee.
B. Exceptions. The provisions of paragraph A shall not preclude the hiring of a former City employee as a consultant to the City, provided that such hiring is approved in advance by the City Council. Nor shall paragraph A apply to any City official or employee who left office or whose City employment or service terminated prior to the effective date of this Section; provided, however, that a person who returns to City office, employment or service on or after the effective date of this Section shall be subject to the requirements hereof.
C. Enforcement. Notwithstanding the provisions of Section 1-6-110, any former City official or employee who knowingly violates the provisions of this Section may be liable in a civil action brought by the District Attorney, the City Attorney, or by a special prosecutor authorized by the City Council, for a fine of up to ten thousand dollars ($10,000) per violation, in addition to such other penalties or remedies as may be available.
(Ord. No. 06-01, § 1, 1-24-06)

Sec. 1-6-108. No nepotism.
A. All hiring decisions shall be made on the basis of merit and in accordance with the City’s Personnel Rules and Procedures, which establish limits and guidelines on the employment of relatives, in order to avoid problems associated with supervision, safety or morale.
B. City officials and employees shall not influence or attempt to influence the awarding of a City contract or execution of a City agreement with a relative as defined in Section 2 of the City's Personnel Rules and Procedures.
(Ord. No. 06-01, § 1, 1-24-06)

Sec. 1-6-109. Whistle blower protection.
To the extent not otherwise prohibited by State law, City officials and employees shall not use or threaten to use any official authority or influence to discourage, restrain or interfere with or to effect a reprisal against any person, including but not limited to a City official or employee, for the purpose or with the intent of preventing such person from acting in good faith to report or otherwise bring to the attention of the City or other appropriate agency, office or department, any information that, if true, would constitute a gross waste of City funds, a gross abuse of authority, a specified and substantial danger to public health or safety due to any act or omission of an City official or employee, or the use of a City office or position or of City resources for personal gain.
(Ord. No. 06-01, § 1, 1-24-06)

Sec. 1-6-110. Enforcement.
A. This division expresses standards of ethical conduct expected for City officials and employees. As an expression of such standards, this division is intended to be self-enforcing for the most part. City officials and employees 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. It will be most effective when City officials and employees are thoroughly familiar with the expressed standards and embrace them.
B. A violation of this division shall not be considered and shall not constitute a basis for challenging the validity of any decision by the City Council or any other body or agency of the City.
C. All suspected violations of this division that also pertain to provisions of the Political Reform Act (California Government Code section 81000 et seq.) should be reported to the Fair Political Practices Commission of the State of California.
D. All suspected violations of this division that may independently constitute criminal offenses, including those outside of the purview of the Fair Political Practices Commission, should be reported to the office of the Orange County District Attorney.
E. Except as otherwise expressly provided by this division or by State law, the following shall constitute the exclusive means and procedures of enforcing the provisions of this division:
1. Alleged violations of this division committed by a member of the City Council, a member of a City commission, or the City Manager should be reported in writing to the City Attorney. Upon receipt of the report, the City Attorney shall discuss the matter with the person who is the subject of the allegation, advising such person of the alleged violation and endeavoring to avoid future violations in the event one has occurred.
2. Alleged violations of this division committed by the City Clerk, a City Council Executive Assistant, an Assistant City Manager, the City Attorney, a Department Director, or a Deputy Department Director should be reported in writing to the City Manager or his/her designee. Upon receipt of the report, the City Manager, or his/her designee, shall commence an investigation to determine whether the alleged violation is substantiated. The City Manager, or his/her designee, shall discuss the matter with the person who is the subject of the allegation, advising such person of the alleged violation. In the event the City Manager, or his/her designee, determines that a violation has
occurred, the City Manager or the appointing authority may take appropriate action in accordance with applicable City rules, regulations, and procedures related to employment and/or discipline.

3. In the event that the City Attorney or City Manager (or his or her designee) determines that a violation of this division has occurred, appropriate documentation should be prepared to memorialize the determination.

(Ord. No. 06-01, § 1, 1-24-06)
Ethical Public Service Ordinance – Measure H
INITIATIVE ORDINANCE NO. 08-03
(Approved by the Voters on June 3, 2008)

AN ORDINANCE OF THE CITY OF IRVINE PROHIBITING THE MAYOR AND THE MEMBERS OF THE CITY COUNCIL, AND THEIR EXECUTIVE ASSISTANTS AND APPOINTED COMMISSIONERS, FROM (1) ENGAGING IN COMPENSATED EMPLOYMENT OR SERVICE FOR LOBBYING FOR ANY PRIVATE PERSON OR ORGANIZATION BEFORE ANY LOCAL PUBLIC AGENCY LOCATED IN THE COUNTY OF ORANGE, AND (2) HAVING A PERSONAL INVESTMENT OR MONETARY INTEREST IN CITY CONTRACTS

The people of the City of Irvine do ordain as follows:

Section 1. Title. This Ordinance shall be known and referred to as the Irvine City Council Ethical Public Service Ordinance.

Section 2. Purpose. This Ordinance is adopted to ensure that the Mayor and members of the City Council, as elected representatives, and their Executive Assistants and appointed Commissioners, are engaged in public service not for private, personal gain, but to advance the interests of Irvine residents and the entire Irvine community.

Section 3. City allegiance and proper conduct.

A. Incompatible employment or service. Because of their uniquely important, visible, and elevated status and responsibilities as elected officials, the Mayor and members of the City Council, and by extension their Executive Assistants and their appointed Commissioners, shall not engage in compensated employment or service for the purpose of lobbying for any private person or organization before any local public agency (county, city or special district) located in the County of Orange.

1. Paragraph A shall not be applicable to lobbying as an in-house employee on behalf of his or her employer (as opposed to a client of the employer).

2. For purposes of paragraph A, "lobbying" shall mean any oral or written communication (including an electronic communication) to an official of a local agency other than the City, made directly or indirectly, in an effort to influence or persuade the official to favor or oppose, recommend or not recommend, vote for or against, or take or refrain from taking action on any public policy issue of a discretionary nature pending before the official's agency, including but not limited to proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids, including the adoption
of specifications, awards, grants, or contracts.

B. **Interest in City contracts.** The Mayor and members of the City Council, and by extension their Executive Assistants and their appointed Commissioners, shall not have a personal investment or monetary interest in any contract made by the City, except contracts relating to the performance of their official City duties.

C. **Knowledge of and agreement to abide by provisions.** The Mayor and members of the City Council and their Executive Assistants and appointed Commissioners shall at the time of their election or appointment or upon the effective date of this Section 3, whichever occurs earlier, sign an appropriate form prepared by the City Clerk reciting their knowledge of the provisions of this Section 3 and their agreement to abide by such provisions.

Section 4. **Enforcement of City allegiance and proper conduct provisions.**

A. The provisions of Section 3 above express standards of ethical conduct expected for City officials and employees. As an expression of such standards, the provisions of Section 3 are intended to be self-enforcing for the most part. City officials and employees 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. It will be most effective when City officials and employees are thoroughly familiar with the expressed standards and embrace them.

B. A violation of the provisions of Section 3 above shall not be considered and shall not constitute a basis for challenging the validity of any decision by the City Council or any other body or agency of the City.

C. All suspected violations of Section 3 above that also pertain to provisions of the Political Reform Act (California Government Code section 81000 et seq.) should be reported to the Fair Political Practices Commission of the State of California.

D. All suspected violations of Section 3 above that may independently constitute criminal offenses, including those outside of the purview of the Fair Political Practices Commission, should be reported to the office of the Orange County District Attorney.

E. Except as otherwise expressly provided by State law, the following shall constitute the exclusive means and procedures of enforcing the provisions of Section 3 above:

1. Alleged violations of Section 3 committed by the Mayor, a member of the City Council or a member of a City commission should be reported in writing to the City Attorney. Upon receipt of the report, the City Attorney shall discuss the matter with the person who is the subject of the allegation, advising such person of the alleged violation and endeavoring to avoid future violations in
the event one has occurred.

2. Alleged violations of Section 3 committed by a City Council Executive Assistant should be reported in writing to the City Manager or his/her designee. Upon receipt of the report, the City Manager, or his/her designee, shall commence an investigation to determine whether the alleged violation is substantiated. The City Manager, or his/her designee, shall discuss the matter with the person who is the subject of the allegation, advising such person of the alleged violation. In the event the City Manager, or his/her designee, determines that a violation has occurred, the City Manager or the appointing authority may take appropriate action in accordance with applicable City rules, regulations, and procedures related to employment and/or discipline.

3. In the event that the City Attorney or City Manager (or his or her designee) determines that a violation of this division has occurred, appropriate documentation should be prepared to memorialize the determination.

Section 5. Effective date. This Ordinance shall go into effect ten (10) days after the date on which the election results are declared by the City Council.

Section 6. Construction. To the maximum extent authorized by law, this Ordinance shall be interpreted in a manner consistent with the right of initiative reserved to the people by the California Constitution. Without limiting the foregoing, nothing in this Ordinance is intended to diminish or otherwise alter applicable requirements of state and federal law.

Section 7. Future amendments. Pursuant to article II, section 10(c) of the California Constitution, the provisions contained in this Ordinance may be amended by a four-fifths vote of the City Council only to the extent such amendments further or expand the intent and objectives set forth in this Ordinance, including but not limited to enforcement provisions. All other amendments or any proposed repeal of the provisions contained in this Ordinance shall become effective only when approved by the voters.

Section 8. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, that determination of invalidity shall not affect other provisions or application of the Ordinance that can be given effect without the invalid provision, and to this end the provisions of this Ordinance are severable. The voters of the City hereby declare that they would have adopted this Ordinance and each portion thereof regardless of the fact that an invalid portion or portions may have been present in the Ordinance.

Section 9. Codification. Upon adoption of this Ordinance pursuant to the approval of the City's voters, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to appropriately codify this Ordinance in the City's Municipal Code.
ADOPTED by the vote of the people of the City of Irvine on June 3, 2008 at a Special Municipal Election as certified by the City Council of the City of Irvine on the 8th day of July, 2008, and becomes effective 10 days thereafter on July 18, 2008.

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA  )
COUNTY OF ORANGE    ) SS
CITY OF IRVINE       )

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was adopted by the voters of the City of Irvine as an initiative measure at an election held on June 3, 2008, as certified by the City Council of the City of Irvine on the 8th day of July, 2008, and that the ordinance becomes effective 10 days thereafter on July 18, 2008.

CITY CLERK OF THE CITY OF IRVINE
APPENDIX I

Campaign Contributions by Appointees and Commissioners
Campaign Contributions Conflicts

June 1999

Campaign Contributions May Cause Conflicts for Appointees and Commissioners

Section 84308

Government Code section 84308 disqualifies any "officer" of a public agency, who is running or has run for elective office, from participating in decisions affecting his or her campaign contributors. The law disqualifies the officer from participating in certain proceedings if the official has received campaign contributions of more than $250 from a party, participant or their agents within the 12 months preceding the decision. It also requires disclosure on the record of the proceeding of all campaign contributions received from these persons during that period. In addition, section 84308 prohibits solicitation or receipt of campaign contributions in excess of $250 during such proceedings, or for three months after the decision, from parties, participants or their agents.

Sarah Smith is a candidate for the Smalltown City Council. Smith is also on the Smalltown Planning Commission. John Builder has a permit request pending before the planning commission. Under section 84308, Smith is prohibited from soliciting or receiving any contribution of more than $250 from Builder or Builder's agent. If Smith did receive a contribution of more than $250 from Builder, Smith and Builder would be required to disclose the contribution in the record of the planning commission meeting. Smith would also have to disqualify herself from considering Builder's permit request unless she returns that portion of the campaign contribution in excess of $250 within 30 days after learning of the contribution and Builder's pending permit.

Who is Covered?

Section 84308 covers all elected and appointed "officers" of an "agency" and their alternates, as well as candidates for elective public office. The term "officer" is very broadly defined under section 84308. It includes the governing board or commission of any public agency, as well as the head of an agency. One important exemption applies to members of the governor's cabinet, but only when they act in the capacity of secretary of an agency. (Reg. 18438.1.)

The scope of the statute is narrowed considerably, however, by the definition of the term "agency." Due to exemptions from the definition of agency (discussed below), the law applies most often to appointed members of local boards and commissions, such as planning commissions.

Section 84308 primarily regulates agencies, not individuals. As a result, a person who is a member of an exempted agency (such as an elected city council), is covered by the law when he or she acts as a voting member of another agency.

What Agencies Are Not Covered?

Section 84308 expressly exempts from its coverage the following agencies:
• the judicial branch
• the Legislature
• the Board of Equalization
• constitutional officers
• local agencies whose members are elected by the voters (e.g., city councils and county boards of supervisors)

The exemption for these agencies extends to **committees** of the agencies, if only members of the governing body of the agency are on the committee. It also applies when the governing body, *in its entirety*, sits as the governing body of another agency (e.g., a board of supervisors designates itself as the redevelopment agency for the county). In these cases, the officers are *not appointed* to the other agency. However, as stated above, if a member of an exempt agency also serves as an appointed member of another, non-exempt agency, the prohibitions of section 84308 do apply.

*Section 84308 applies to city councilmembers who also serve as members of the City of Brea Redevelopment Agency, unless the redevelopment agency is made up of the city council in its entirety without any other members. (Markman I-94-223.)*

*In determining whether a board or commission is exempt for purposes of Section 84308, the focus should be on the actual make-up of the board or commission. For instance, the governing board of a sanitation district that may consist of both elected and appointed members, but which, in fact, consists solely of members of the board of supervisors, is exempt under section 84308. (Dixon A-96-203.)*

**Prohibited Conduct**

Section 84308 prohibits officers from soliciting, accepting or directing campaign contributions of more than $250 from any party, participant or agent of a party or participant, while a proceeding is pending before the officer's agency and for three months following the date of that decision. This prohibition applies even where the contribution is directed to *another* candidate. Similarly, a party, a participant, or an agent cannot make a campaign contribution of more than $250 to an officer during the course of the proceedings and for three months following the decision.

FPFC regulation 18438.6 defines when behavior becomes "soliciting, accepting or directing contributions." In short, for section 84308 to apply, contributions must be made to and accepted by an officer for his or her own candidacy or controlled committee.

An officer "solicits" a contribution only if he or she knows or has reason to know that the person being solicited is a party or participant (or an agent of either) and personally requests the contribution or knowingly allows his or her agent to do so. A prohibited solicitation under section 84308 does not include a request made in a mass mailing to the public, at a public gathering or in a published newspaper or other vehicle of mass media.

A person "directs" a contribution if he or she acts as the agent of another person or committee, other than his or her own controlled committee, in accepting a contribution on behalf of, or transmitting a contribution to, such other person or committee.

*A planning commissioner is prohibited under section 84308 from soliciting, accepting or directing contributions for a candidate for the state office of Secretary of State, if the person making the contribution is a party, participant or an agent of a party or participant in a proceeding before the planning commission. (Calvert A-94-263.)*
Disqualification

An officer will be disqualified from participating in a decision when, prior to making the decision, he or she learns that a party or participant in a proceeding (either individually or with or through an agent) has made a contribution of more than $250 to the officer within the preceding 12 months. However, if the officer returns the contribution (or that portion of the contribution which is over $250) within 30 days from the time he or she learns of the contribution and the proceeding, then disqualification is not required. (Regulation 18438.7 discusses an officer's knowledge of pending proceedings, parties and participants to the proceeding, and their contributions.)

A developer has filed for a conditional use permit from the city's land use agency. The developer gave a land use agency officer a $750 campaign contribution two months before he filed for the permit. The campaign contribution did not violate section 84308 since it was given prior to the developer's request for a permit (which initiates a proceeding under section 84308). Both the officer and the developer are required to disclose the contribution and the officer must disqualify himself from considering the conditional use permit, unless the officer returns at least $500 of the $750 (reducing the amount to $250) within 30 days of learning of both the contribution and the proceeding.

Disclosing Contributions

Prior to rendering any decision, each officer who received a campaign contribution of more than $250 within the preceding 12 months from a party, participant or agent of a party or participant must disclose the fact on the record of the proceeding. If there is a public hearing, the officer should make the disclosure on the public record at the beginning of the hearing. However, if no public hearing is held, the disclosure should be included in the written record of the proceeding.

Likewise, a party or participant to a proceeding must disclose on the record of the proceeding any campaign contribution of more than $250 made within the preceding 12 months by the party or participant, or his or her agent, to any officer of the agency. The FPPC has prepared sample disclosure forms for this purpose which you may call the agency to request.

Proceeding

A proceeding involves action to grant, deny, revoke, restrict or modify "licenses, permits, or other entitlements for use." (Reg. 18438.2.) Section 84308 defines the phrase "licenses, permits, or other entitlements for use" to mean proceedings on all business, profession, trade and land use licenses and permits, and other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor or personal employment contracts) and all franchises.

Examples of the types of decisions covered by the law include decisions on professional license revocations, conditional use permits, rezoning of real estate parcels, zoning variances, tentative subdivision and parcel maps, consulting contracts, cable television franchises, building and development permits, public street abandonments, and private development plans.

Decisions on general plans, general building or development standards or other rules of general application are not covered by section 84308. In addition, "proceedings" do not include purely ministerial decisions, in which no discretion is exercised.

The prohibitions of section 84308 apply to proceedings that are "pending" before the agency with which the officer is affiliated. A proceeding is pending when: (1) an application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction
of an agency for its determination or other action; and (2) the proceeding is of a type that the
officers of the agency are required by law to make a decision about or the matter has been
submitted to those officers for their decision. (Reg. 18438.2(b).)

Once the staff of an agency has started reviewing a request for proposal ("RFP"), the contract
proceeding has commenced and is pending before the agency. From that point forward (and until
three months following the date a final decision is rendered), no officer of the agency may accept,
solicit or direct a contribution in excess of $250 from any participant who attempts to influence the
review of the RFP. (Alperin A-96-083.)

Party

A party is any person (including a business entity) who files an application for, or is the subject of,
a proceeding involving a license, permit or other entitlement for use.

When a closed corporation is a party (or participant) in a proceeding before a board, commission,
or agency, the majority shareholder of the corporation is also treated as a party (or participant),
and all prohibitions and disclosures required under section 84308 will apply to the majority
shareholder. (§84308(d).)

Participant

A participant is any person who is not an actual party to the proceeding, but who:

(1) actively supports or opposes a particular decision (e.g., lobbies the officers or employees of
the agency, testifies in person before the agency, or otherwise acts to influence the officers of the
agency); and (2) has a financial interest in the outcome of the decision. A person does not lobby,
testify or otherwise act to influence the officers or employees of an agency by communications
made to the public, other than those made in the proceedings before the agency. (Reg.
18438.4(d).)

Paul Peters and Nancy North are neighbors. North has applied for a conditional use permit to
allow her to conduct an auto repair business on her driveway. In opposing North's application
before the planning commission, Peters testified that granting the permit would substantially
reduce the fair market value of his property. He also presented a petition signed by 20 neighbors
opposed to granting the permit. North is a party. Peters is not an actual party to the proceeding,
but since he testified in opposition to North's request, and has a financial interest in the outcome
of the proceeding, he is a participant. The neighbors who merely signed the petition are not
participants.

Agent

An agent is an individual or firm who represents a party or a participant in a proceeding. If an
agent is an employee or member of a law, architectural, engineering or consulting firm, or a
similar entity, both the entity and the individual are considered agents. Campaign contributions
made by a party or participant are aggregated with those made by the party or participant's agent
within the 12 months preceding the decision or the period of the agency relationship, whichever is
shorter. (Reg. 18438.3.)

An attorney representing a party in a proceeding and that attorney's law firm are considered
agents of the party. The law firm has a PAC that wishes to make contributions to an official who
sits on the board before which the proceeding is occurring. If the law firm and the PAC are
directed and controlled by a majority of the same persons, the contributions of the two entities will be aggregated for purposes of section 84308. If the combined contributions of the law firm and the PAC to the official would exceed $250, the PAC's contribution would be prohibited. (Sutton A-95-156.)

A spouse is an agent for purposes of section 84308. If the spouse of an official solicits contributions of more than $250 from a person the official knows or has reason to know is a party, a participant, or an agent of a party or participant, a prohibited solicitation will result. (Calvert A-94-263.)

A person is the "agent" of a party to, or a participant in, a proceeding only if he or she represents that person in connection with the proceeding. An attorney representing clients before the coastal commission is an agent of those clients. If the attorney's contributions made to a member of the coastal commission exceed $250 within the prohibited time period, the official must disqualify himself from the proceeding. (Karas I-94-211.)

Fair Political Practices Commission 916. 322.5660

428 J Street, Ste. 620, Sacramento, CA 95814

www.fppc.ca.gov

1. Citations contained in this fact sheet refer to the Political Reform Act, Cal. Gov. Code §§81000-91015, to Fair Political Practices Commission regulations, contained in Title 2, Division 6 of the California Code of Regulations, and to FPPC advice letters, available on Westlaw (Ca-Eth) and Lexis (CaFair). You should not rely solely on this fact sheet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations.

2. Though the Board of Equalization is not covered by section 84308, it is subject to Government Code section 15626, a similar statute that prohibits Board of Equalization members from acting on adjudicatory proceedings if they have received a contribution of $250 or more from a party or participant.
Community Services Commission Bylaws
CITY COUNCIL RESOLUTION NO. 08-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE AMENDING THE BYLAWS OF THE COMMUNITY SERVICES COMMISSION

WHEREAS, Section 1-4-213 of the Code of the City of Irvine authorizes City Commissions to adopt rules and regulations for the conduct of its meetings, provided that such rules and regulations do not conflict with the City Code, and further provided that the City Council approves such rules and regulations; and

WHEREAS, on February 13, 1973, the City Council adopted Resolution No. 137 approving the powers, duties and bylaws of the Community Services Commission;

WHEREAS, on August 28, 1973, the City Council adopted Resolution No. 195 approving the powers, duties and bylaws of the Community Services Commission and rescinding Resolution No. 137;

WHEREAS, on March 12, 1974, the City Council adopted Resolution No. 262 approving the powers, duties and bylaws of the Community Services Commission and rescinding Resolution No. 195;

WHEREAS, on March 11, 1975, the City Council adopted Resolution No. 397 approving the powers, duties and bylaws of the Community Services Commission and rescinding Resolution No. 262;

WHEREAS, on February 25, 1992, the City Council of the City of Irvine adopted Resolution No. 92-18 approving the Bylaws of the Community Services Commission of the City of Irvine; and

WHEREAS, on May 27, 1997, the City Council of the City of Irvine adopted Resolution No. 97-35 amending the bylaws of the Community Services Commission of the City of Irvine;

WHEREAS, at its meeting of August 6, 2008, the Community Services Commission voted to amend Section 8.0, Meetings, Section 8.1, Regular Meetings, of the Bylaws; and

WHEREAS, the amended Bylaws are consistent with the Code of the City of Irvine.

NOW, THEREFORE, the City Council of the City of Irvine does hereby resolve as follows:

ATTACHMENT
Section 1. The amended Bylaws of the Community Services Commission of the City of Irvine, presented as Attachment 1, are hereby approved.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 12th day of August, 2008.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA   )
COUNTY OF ORANGE      ) SS
CITY OF IRVINE         )

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 12th day of August, 2008.

AYES: 5 COUNCILMEMBERS: Agran, Choi, Kang, Shea and Krom

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None
COMMUNITY SERVICES COMMISSION
City Council Resolution No. 08-90

The Community Services Commission meets every 1st and 3rd Wednesday at 5:30 p.m. in the City Council Chamber.

1.0 COMMISSION CREATION, TITLE AND AUTHORITY

1.1 Creation - The Irvine Community Services Commission is created under Section 3-3-101 of the Irvine Code of Ordinances.

1.2 Title - This body officially shall be known as the “Irvine Community Services Commission.” The terms “Community Services Commission” and “Commission,” where used in these Bylaws, also shall refer to and mean the Irvine Community Services Commission.

1.3 Powers and Duties - The powers and duties of the Irvine Community Services Commission are set forth in Section 3-3-104 of the Irvine Code of Ordinances.

2.0 MEMBERS, OFFICERS AND STAFF

2.1 Members - The Irvine Community Services Commission consists of five members appointed by the City Council. Each member of the City Council shall appoint one Commissioner who shall serve at the pleasure of the member of the City Council who appointed such Commissioner.

A. Appointment – An appointment to the Community Services Commission shall be made by filing a written statement with the City Clerk setting forth:

(1) The fact of such appointments;

(2) The name of the person being appointed; and

(3) The date as of which such appointment is to be effective.

All Commissioners shall be appointed for a term of one (1) year, or until the expiration of the term of the member of the Council who appointed them, whichever occurs first; provided, however, a Commissioner is appointed and qualifies for office. Commissioners may be reappointed to any number of one year terms, consecutive or not.

B. Removal – A Commissioner may be discharged from his position and duties at any time, and without cause, by the member of the City Council who appointed such Commissioner by their filing with the City Clerk a written statement setting forth:

(1) The facts of such removal;

(2) The name of the person being removed; and

ATTACHMENT 1
(3) The date such removal is to be effective.

C. Vacancy - members - Should any vacancy occur among the members of this Community Services Commission other than by expiration, the Secretary immediately shall notify the City Manager. The City Council member who originally appointed the Commissioner who vacated his or her seat shall fill the vacancy by appointment for the unexpired portion of the term. Any absence for three (3) consecutive meetings without the consent of the Commission shall be deemed an abandonment of the seat on the Commission, and constitute a vacancy. After two (2) consecutive absences without the consent of the Commission, the Commission Secretary shall notify the City Council member who appointed the Commissioner of the absences in writing, and the fact that one more consecutive unauthorized absence shall constitute abandonment of that Commissioner’s seat, and create a vacancy.

B. Vacancy - Chair or Vice Chair - Should the Chair or Vice Chair, cease to be members of the Commission, the remaining members shall elect a Chair or Vice Chair at the second regular meeting thereafter, by a majority vote of members present, providing there is a quorum. The officer so elected shall serve for the unexpired portion of the term of office.

2.2 Officers - Officers of the Commission shall consist of a Chair, Vice Chair, and Secretary. The Chair and Vice Chair shall be elected by the Commission at the annual meeting by plurality vote, providing there is a quorum present. The Secretary shall be the Director of Community Services, or designee, and the term shall correspond to his/her official tenure.

A. Chair - Shall preside at all meetings and hearings of the commission; call special meetings in accordance with these Rules of Procedure; appoint committees and act as an ex-officio member of all committees so appointed; and sign documents in accordance with these Rules of Procedure and as prescribed by City Code or State law. He or she may represent the Commission before the City Council or appoint other members to do so.

B. Vice Chair - Shall perform all of the duties of the chair in case of his absence or disability and shall perform such other duties as may from time to time be assigned by the Chair.

C. Secretary - The Director of Community Services shall serve as Secretary to the Commission and as such administer the preparation of agenda, staff reports, minutes, and all other functions relative to the work and operation of the Community Services Commission.

2.3 Staff

A. The Director of Community Services - Shall be an ex-officio member of the Commission and as such shall provide technical service to the Commission and shall attend or designate appropriate staff to attend all meetings.
B. **Other Staff Resources** – The Director of Community Services may, from time to time, as appropriate, ask other City staff, either within or outside the Community Services Department, to act as advisors or consultants to the Commission.

C. **Clerk** - Shall serve as the recording Secretary of the Community Services Commission, and shall be responsible for taking and transcribing minutes, recording all votes, and receiving all documentary evidence.

### 3.0 INITIATING AN AGENDA ITEM

The Commission has the authority on its own initiative to discuss and/or act on any matter within its statutory authority. The normal procedure for initiating an item for Commission consideration is as set forth below:

#### 3.1 Commissioner Request -
Any Community Services Commissioner may initiate an item for Commission consideration by making such a request to the Secretary of the Community Services Commission by no later than the legal deadline for noticing and placing the matter on the agenda.

#### 3.2 Public Requests –
Matters coming from the public, including communications from community associations and civic organizations, to be assured of consideration and action at a meeting of the Commission, must be received in writing at least fourteen (14) days preceding the Commission meeting.

#### 3.3 Staff Requests –
City staff may initiate a request to have the Commission consider an item within the Commission jurisdiction by making a request through the Community Services Director at least 14 days prior to the meeting at which consideration is to take place.

### 4.0 COMMISSION MEETING PROCEDURE

#### 4.1 Call to Order -
Meetings shall be called to order by the Chair of the Commission or, in his or her absence, the Vice Chair. If both are absent, the Commission members present shall select a Chair Pro Tem to conduct the meeting, so long as a quorum is present.

#### 4.2 Regular Meetings -
All regular meetings shall be conducted in the order set forth in the following paragraphs. While the Commission will not normally hold public hearings there is no prohibition against doing so, if appropriate. The Chair, or a majority of the Commission, may direct an agenda item to be taken out of order, if it would serve the public to do so, under the following circumstances:

(a) A significant interest in a particular item;
(b) A significant number of people present for the hearing of a particular item;
(c) The length of the hearing anticipated with respect to a particular agenda item.

A. **Call to Order** - The Chair shall call the meeting to order.
B. **Roll Call** - The Secretary shall record attendance

C. **Pledge of Allegiance** - The Chair or his/her designee shall lead the Pledge of Allegiance to the Flag of the United States of America.

D. **Moment of Silence** – The Chair shall call for a moment of silence.

E. **Introductions** – Community Services Commissioners or staff may make introductions.

F. **Presentations** – The staff may make presentations to the Commission.

G. **Announcements** – Commissioners or Director may make announcements relating to Commission or City business.

H. **Committee Reports** – The Commission may receive any Committee reports.

I. **Agenda Review** - The Chair shall review the agenda and solicit any deletions or additions. Additions may be made so long as such additions do not require the Community Services Commission to “act” as defined in Section 6.3B of these Bylaws.

J. **Consent Calendar** – All items which are considered routine in nature or which do not require discussion by the Commission or the public shall be placed on the Consent Calendar. Any Community Services Commissioner or member of the public may withdraw any item from the Consent Calendar by oral request prior to a vote on the Consent Calendar. After all requests for removal have been made, the Consent Calendar shall be voted on as a single item. A majority vote for approval of the Consent Calendar shall constitute the approval of each item thereon. Each removed item shall then be voted on individually.

K. **Public Comment** - The Chair shall ask if any person wishes to speak to the Commission on any item not listed on the agenda. Comment is limited to three (3) minutes per speaker.

L. **Commission Business** - Any item relating to the functioning of the Commission which is not on the Consent Calendar shall be included on the agenda as “Commission Business.”

M. **Task Force Reports** – Commission reports, if any, on attendance at Task Force meetings.

N. **Director Reports** – Items responding to Commission requests or updates on ongoing matters.

O. **Additional Matters** - Any items not fitting within the above categories.
P. Adjournment - Chair solicits motion to adjourn to next meeting.

5.0 PRESENTATIONS BEFORE THE COMMISSION

5.1 Rules of Presentation.

A. Addressing Commission.

(1) Securing permission, right to address Commission. Any person desiring to address the Commission shall first secure the permission of the presiding officer; provided, however, that under the following headings of business, unless the presiding officer rules otherwise, any qualified and interested person shall have the right to address the Commission upon obtaining recognition by the presiding officer:

(a) Staff reports. Interested parties or their authorized representatives may address the Commission with regard to written communications referred to in the staff reports.

(b) Public comment. Any person may address the Commission by oral communication on any matter over which the Commission has jurisdiction.

(2) Manner of addressing Commission; time limit. spokesperson for group. Persons addressing the Commission shall step up to the microphone at the table, give their name and address in an audible tone of voice for the record, and, unless further time is granted by the presiding officer, limit their address to five (5) minutes; providing, however, that when making public comment on items not on the agenda, each person addressing the Commission shall limit his or her remarks to three (3) minutes, unless further time is granted by the presiding officer. All remarks shall be addressed to the Commission as a body and not to any member thereof. No person, other than a member of the Commission, and the person having the floor, shall be permitted to enter into any discussion without the permission of the presiding officer.

Whenever a group of persons wishes to address the Commission on the same subject matter, it shall be proper for the presiding officer to request that a spokesman be chosen by the group to address the Commission, and in case additional matters are to be presented at the time by any other member of said group, to limit the number of persons addressing the Commission, so as to avoid unnecessary repetition before the Commission. The presiding officer may interrupt a speaker and instruct him to redirect his remarks or cause him to terminate his remarks when they are not relevant to the matter before the Commission.
B. Decorum.

(1) By Commission Members. While the Commission is in session, the members must preserve order and decorum, and a member shall neither, by conversation or otherwise, delay or interrupt the proceeding or the peace of the Commissioner or disturb any member while speaking or refuse to obey the orders of the Commission or the presiding officer, except as otherwise provided in these Bylaws.

(2) By other persons. Persons who substantially impair or disturb a Commission meeting by intentionally committing acts in violation of the provisions of these Bylaws or of implicit customs or usages governing the conduct of Community Service Commission meetings shall be advised of such violation and requested to curtail such acts by the presiding officer. If, after such advice and request, such persons refuse or fail to curtail such acts, the presiding officer may cause any peace officer present to eject them from the council chamber or place them under arrest and be charged with a violation of California Penal Code Section 403. In the event that the meeting is interrupted so as to render the orderly conduct of such meeting infeasible, and order cannot be restored, the Commission may order the room cleared and continue in session.

6.0 PUBLIC NOTICES

6.1 Posting of Notice and Agenda.

A. Posting of Notice and Agenda – For every regular or special meeting, the Secretary of the Community Services Commission or his or her designee shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all the items of business to be discussed at the meeting.

B. Location of Posting - The notice and agenda shall be posted at the Police office at 1 Civic Center Plaza in the City of Irvine.

C. Posting for Regular Meetings - For any regular meeting of the Community Services Commission, the notice and agenda shall be posted no later than seventy two (72) hours prior to the time set for the meeting.

D. Posting for Special Meetings - For any special meeting of the Community Services Commission, the notice and agenda shall be posted in a location that is freely accessible to the public no later than twenty four (24) hours prior to the time set for the meeting.
E. Posting for Emergency Meetings - In case of an emergency as described in Section 8.7 of these Bylaws, the Commission may, pursuant to Government Code Section 54956.5, hold an emergency meeting without complying with the normal notice or posting requirements.

F. Affidavit of Posting - Immediately following the posting of the notice and agenda, the City Clerk or his or her designee shall complete an Affidavit of Posting, in a form to be developed by the City Clerk. The Affidavit of Posting shall indicate the time of the posting, the location(s) of the posting, and shall be signed under penalty of perjury. The City Clerk shall retain all such affidavits, together with a copy of each notice and agenda so posted, in his or her files.

6.2 Agenda - Contents.

A. Description of Matters - All items of business to be discussed at a meeting of the Community Services Commission shall be briefly described on the agenda. The description need not set out the specific action or alternatives which will be considered by the Community Services Commission, but should contain sufficient detail so that a person otherwise unaware could determine the general nature or subject matter of the item by reading the agenda.

B. Limitation of Actions by Agenda - No action shall be taken by the Community Services Commission, on any item not appearing on a posted agenda, subject only to the following exceptions:

1. Upon a determination by a majority vote of the Commission that an emergency situation exists, as defined in Section 54956.5 of the California Government Code.

2. Upon a determination by a two-thirds vote of the Commission, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that the need to take action arose subsequent to the agenda being posted.

3. The item was posted for a prior meeting of the Commission which occurred not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

4. "Action taken" as used herein shall mean a collective decision made by a majority of the Members of the Community Services Commission, a collective commitment or promise by a majority of the Members of the Community Services Commission to make a positive or a negative decision, or an actual vote by a majority of the Members of the Community Services Commission upon a motion, proposal, resolution, order, or ordinance. With regards to
matters not on the agenda, the Members of the Community Services Commission may ask questions of persons who raise such matters during the Public Comment period or otherwise, infra, but such questions should be limited to informational purposes, and the Community Services Commission should avoid discussions of the merits or giving directions regarding such subjects. With regards to matters raised by Members of the Community Services Commission under Staff and Community Services Commission Reports, such matters which are not on the Agenda should normally be placed on future agenda. These matters may not be discussed and no action may be placed on such matters without being placed on a subsequent Agenda. The above notwithstanding, “Action Taken” shall not refer to a request by the Community Services Commission that Staff return with information at some future date.

7.0 STANDING RULES

7.1 Quorum - At any meeting of the Community Services Commission, a quorum shall consist of three of the appointed members of the Commission. No action shall be taken in the absence of a quorum, except that those members present shall be entitled by motion to adjourn the meeting to another date.

7.2 Voting

A. One vote per member - The Chair, Vice Chair, and each Commissioner shall be entitled to one vote.

B. Proxy votes - No proxy votes are permitted.

C. Roll Call - A roll call shall be taken upon the passage of all resolutions. Such votes shall be recorded in the minutes of the proceedings of the Commission. Upon the request of any Commission, a Roll Call vote shall be taken and recorded on any vote. Whenever a Roll Call vote is in order, the Clerk shall call the names of the members in alphabetical order—except that the name of the presiding officer shall be called last.

D. Conflict of Interest – All commission members shall be subject to, and conform with, state conflict of interest provisions as set forth in the Political Reform Act of 1974, Government Code Section 87100 et seq. and Title 2 California Code of Regulations Section 18700 et seq. Furthermore, Commission members shall be subject to Government Code Section 1090 et seq., which prohibits any public official from being financially interested in a contract or sale in both his or her public and private capacities, unless such interest is a “remote interest” as set forth in Section 1091, or a “non-interest” as set forth in Section 1090.5.

E. Majority vote - A majority vote of the members present shall be necessary for the adoption of any proposed action,
resolution or other voting matter except where otherwise set forth in these Bylaws.

F. **Tie Votes** - Tie votes shall be recorded as a failure of action to pass. A tie vote on a motion defeats the motion.

G. **Absence from Meeting** - Any member absent from all or a potion of a meeting shall not be allowed to vote at a subsequent meeting on any agenda item discussed while the member was absent until said member has listened to the tapes of the meeting, reviewed the minutes, if prepared, and all correspondence pertaining to the subject, and discussed the matter with staff or otherwise adequately familiarized himself with the subject matter of the agenda item.

H. **Silence constitutes affirmative vote.** Unless a member of the Commission has a disqualifying conflict of interest and abstains from voting, pursuant to paragraph D above, no member shall be permitted to abstain from voting and any unauthorized abstention shall be recorded as an affirmative vote.

7.3 **Signature**

A. **Minutes** – Shall also be signed by the Secretary or his or her staff.

B. **Other Correspondence** – Shall be sent out over the signature of the Director of Community Services or an officer of the Commission, so officially designated.

7.4 **Procedural Questions** - The Secretary shall rule on all procedural questions.

7.5 **Suspension of Rules** - The Commission may suspend any of these rules by a unanimous vote of the members present to the extent that such suspension does not conflict with controlling state law.

7.6 **Parliamentary Procedure.**

A. **Presiding officer may debate and vote.** The presiding officer may move, second and debate from the chair, subject only to such limitations of debate as are by these rules imposed on all members of the Commission and shall not be deprived of any of the rights and privileges of a member of the Commission by reason of acting as the presiding officer.

B. **Getting the floor; Improper references to be avoided.** Every member of the Commission desiring to speak shall address the chair, and upon recognition by the presiding officer, shall confine their remarks to the question under debate, avoiding all personalities and indecorous language.

C. **Interruptions.** A member of the Commission once recognized shall not be interrupted when speaking unless it be a call to
order, or as herein otherwise provided. A member of the Commission called to order shall cease speaking until the question of order be determined, and if in order, shall be permitted to proceed.

D. **Motion to reconsider.** A motion to reconsider any action taken by the Commission may be made only on the day such action was taken. Such motion must be made by a Commissioner on the prevailing side of the vote, but may be seconded by any member of the commission and may be made at any time and have precedence over all other motions. It shall be debatable. Nothing herein shall be construed to prevent any member of the Commission from making or remaking the same or other motion at a subsequent meeting of the Commission.

E. **When remarks of Commission entered in minutes.** A member of the Commission shall have the right, upon request to the presiding officer, to have an abstract of his or her statement on any subject under consideration by the Commission entered in the minutes. Such an abstract shall contain the statement of each other Commission member who addresses the subject at that time.

F. **When synopsis of debate entered in minutes.** The presiding officer, with consent of the Commission, may direct a synopsis of the discussion on any subject under consideration by the Commission.

G. **Rules of order.** Except as otherwise provided in this chapter, "Robert's Rules of Order, Newly Revised," shall govern the conduct of the meetings of the Commission. However, no resolution, proceeding or other action of the Commission shall be invalidated, or the legality thereof, otherwise affected, by the failure or omission to observe or follow said rules.

8.0 MEETINGS

8.1 **Regular Meetings.** - Regular meetings of the Community Services Commission shall be held in the City Council Chambers, City Hall; 1 Civic Center Plaza, Irvine, California, at 5:30 P.M., on the first and third Wednesday of each month. At such meetings, all matters properly on the Agenda, shall be considered, as set forth in Section 4.0 of these Bylaws. Unless a majority of the members present votes otherwise, the meetings of the Commission shall adjourn at or before 11:00 p.m. If the business of the Commission has not been completed by 11:00 p.m., the Commission may vote to remain in session until all or a portion of its remaining business has been completed. All matters remaining after the Commission adjourns shall be continued to a subsequent regular meeting of the Commission.
8.2 **Adjourned Meetings** - Any regular meeting may be adjourned to a designated time and place and when so adjourned shall be considered as a regular meeting.

8.3 **Special Meetings** - A special meeting may be called at any time by the Chairman of the Commission, or by a majority of the Commission's members, by delivering personally or by mail, or facsimile transmission written notice to each member of the Commission and to each local newspaper of general circulation, radio or television station requesting notice in writing at least 24 hours before the time of the meeting, as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at these meetings by the Commission. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes, files with the ex-officio secretary a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

8.4 **Annual Meeting** - The Annual Meeting of the Community Services Commission shall be the first regular meeting in the month of January of each year. Such meeting shall commence with the election of a Chair, and Vice Chair, for the ensuing year and such other business as shall be scheduled by the Commission.

8.5 **Meetings on Holidays** - When a regular meeting falls on a holiday, the meeting shall be held on the next business day or on a day to which the previous meeting was adjourned.

8.6 **Cancellation of Meeting** - Whenever reasons exist, lack of a quorum, no business for Commission consideration, or other good and valid reason, a meeting may be canceled by the Chair. Such cancellation may be made at any time prior to the meeting but must be in writing and submitted to the Secretary at least twenty-four (24) hours prior to the scheduled meeting, and shall state the reason for said cancellation.

8.7 **Special Emergency Meetings** - Special Emergency Meetings may be called by the Chair or by a majority of the Community Services Commission where prompt action is necessary due to the disruption or threatened disruption of public facilities as that phrase is used in Government Code Section 54956.5.

8.8 **Adjourned Meetings** - The Community Services Commission may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. If a quorum is not present, less than a quorum may so adjourn. If all Members are absent from any regular or adjourned regular meeting, the Secretary of the Community Services Commission may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be delivered personally to each Commissioner member at least three
(3) hours before the adjourned meeting. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held, within 24 hours after the time of adjournment. When a regular or adjourned regular meeting is adjourned as provided herein, the resulting adjourned regular meeting shall be a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.

8.9 **Closed Sessions** - The Community Services Commission may hold closed sessions during a regular or special meeting when authorized by State law and only to consider matters within the Commission’s jurisdiction. If a closed session is included on the agenda, the description of the item must identify the statutory basis for the closed session. During closed session, the Community Services Commission may exclude any person or persons which it is authorized by State law to exclude from a closed session. However, no minutes of the proceedings of the Community Services Commission during a closed session are required. The minutes of the Community Services Commission meeting shall reflect that the closed session occurred and the authority for the closed session. There shall be no closed session during any emergency meeting.
Finance Commission Bylaws
RESOLUTION
establishing the
FINANCE COMMISSION

BYLAWS of the
FINANCE COMMISSION
CITY COUNCIL RESOLUTION NO. 86-65

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE CREATING AND OUTLINING THE POWERS, DUTIES, AND BYLAWS OF THE FINANCE COMMISSION

WHEREAS, the City Council of the City of Irvine recognizes the importance of economic and financial affairs with regard to the proper functioning of City government and the well-being of the citizens of Irvine; and

WHEREAS, the Council does also recognize the importance of citizen participation as an integral part of the development and operation of the City; and

WHEREAS, City Commissions provide a valuable communication link between the government of the City, as well as providing specialized expertise in areas where it may be inappropriate to hire full time staff.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY RESOLVE as follows:

SECTION 1. Creation. There is hereby created a Finance Commission in and for the City.

SECTION 2. Composition. The Finance Commission shall consist of five (5) members who are residents of the City.

SECTION 3. Appointment. The members of the Finance Commission shall be appointed by the City Council in conformance with Section 1.F-202 of the Irvine City Code.

SECTION 4. Duties. The Finance Commission shall have the duty to:

(a) Act in an advisory capacity to the City Council in matters pertaining to short- and long-range financial planning and funding to City activities.

(b) Review the City's general fund, capital improvement program and special funds budgets, including review of policies and procedures, time frames, format, service deliveries, funding alternatives, and City Council priorities. The emphasis should be on program and/or major expenditures.

(c) Review proposals and make recommendations regarding new and increased revenue sources.

(d) Advise Council of the fiscal impacts of franchise agreements and major contracts or in the instance of revisions to these agreements.

(e) Review and make recommendations regarding City support or opposition to proposed state or federal legislation which impacts the City's finances.

-1-
(f) Review proposals and make recommendations regarding service delivery alternatives.

(g) Perform such other duties or studies as may be directed by the City Council.

It is not the purpose of the Finance Commission to advise on regular or routine financial administration, nor to become involved in other than the financial impact of the projects/programs they are asked to review. It is intended that the Finance Commission act in an advisory capacity only and that they not be vested with final authority in the establishment of priorities or the expenditure of funds.

SECTION 5. Appropriations. The City Council shall include in its annual budget such appropriations of funds, as in its opinion, shall be sufficient for the efficient and proper functioning of the Finance Commission.

SECTION 6. Compensation and expenses. Each member of the Finance Commission shall receive as compensation, a sum set by the City Council and may be allowed reasonable travel and other expenses actually incurred while traveling or engaged in business authorized by the Commission.

SECTION 7. Communications. Matters coming from the public including communications from community associations and civic organizations, to be assured of consideration and action at a meeting of the Finance Commission, must be received in writing at least fourteen (14) days preceding the commission meeting. All written communications shall be sent out over the signature of the Director of Administrative Services or of an officer of the commission, so officially designated.

SECTION 8. Meetings and procedures.

(a) The Finance Commission shall meet regularly at least once each month, at a time and place to be fixed by the City Council, and shall hold such other meetings as from time to time shall be called in the manner and form required by law.

(b) The meetings and procedures of the Finance Commission shall be subject to and governed by the resolutions and ordinances of the City Council establishing rules and regulations for commissions and committees.

SECTION 9. Powers of Appointment. The Finance Commission shall have the power to appoint subcommittees of not more than two of their own members, and to appoint committees, as defined in Chapter 3 of the City Code, to perform tasks within their scope of responsibilities.
PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 13th day of May, 1986.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA  )
COUNTY OF ORANGE  ) SS
CITY OF IRVINE  )

I, NANCY C. LACEY, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 13th day of May, 1988, by the following roll call vote:

AYES: 5  COUNCILMEMBERS: Agran, Catalano, Miller, Wiener, and Baker

NOES: 0  COUNCILMEMBERS: None

ABSENT: 0  COUNCILMEMBERS: None

CITY CLERK OF THE CITY OF IRVINE

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RESOLUTION NO. 86-65
BYLAWS
of the
FINANCE
COMMISSION

Creation: There is hereby created a Finance Commission in and for the City.

Composition: The Finance Commission shall consist of five (5) members who are residents of the City.

Appointment: The members of the Finance Commission shall be appointed by the City Council in conformance with Section I.F-202 of the Irvine City Code.

Duties: The Finance Commission shall have the duty to:

a) Act in an advisory capacity to the City Council in matters pertaining to short- and long-range financial planning and funding to City activities.

b) Review the City's general fund, capital improvement program and special funds budgets, including review of policies and procedures, time frames, format, service deliveries, funding alternatives, City Council priorities. The emphasis should be on program and/or major expenditures, not line item detail.

c) Review proposals and prepare discussion memorandums regarding new and increased revenue sources.

d) Advise Council of the fiscal impacts and franchise agreements and major contracts or in the instance of revisions to these agreements.

e) Review and make recommendations regarding City support or opposition to proposed state or federal legislation which impacts the City's finances.

f) Review proposals and make recommendations regarding service delivery alternatives.

g) Perform such other duties or studies as may be directed by the City Council.

It is not the purpose of the Finance Commission to advise on regular or routine financial administration, nor to become involved in other than the financial impact of the projects/programs they are asked to review. It is intended that the Finance Commission act in an advisory capacity only and that they not be vested with final authority in the establishment of priorities or the expenditure of funds.

Appropriations: The City Council shall include in its annual budget such appropriations of funds, as in its opinion, shall be sufficient for the efficient and proper functioning of the Finance Commission.

Compensation and expenses: Each member of the Finance Commission shall receive as compensation a sum set by the City Council and may be allowed reasonable travel and other expenses actually incurred while traveling or engaged in business authorized by the Commission.

Communications: Matters coming from the public including communications from community associations and civic organizations, to be assured of consideration and action at a meeting of the Finance Commission, must be received in writing at least fourteen (14) days preceding the commission meeting. All written communications shall be sent out over the signature of the Director of Administrative Services (This may need to be updated also. If so, can it be without updating the resolution.) or of an officer of the commission so officially designated.

Meetings and procedures:

a) The Finance Commission shall meet regularly at least once each month, at a time and place to be fixed by the City Council, and shall hold such other meetings as from time to time shall be called in the manner and form required by law.
b) The meetings and procedures of the Finance Commission shall be subject to and governed by the resolutions and ordinances of the City Council establishing rules and regulations for commissions and committees.

Powers of Appointment: the Finance Commission shall have the power to appoint subcommittees of not more than two of their own members and to appoint committees, as defined in Chapter 3 of the City Code (this may need to be checked also) to perform tasks within their scope of responsibilities.
Green Ribbon Environmental Committee Bylaws
CITY COUNCIL RESOLUTION NO. 12-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE OUTLINING THE POWERS, DUTIES AND BYLAWS OF THE IRVINE GREEN RIBBON ENVIRONMENTAL COMMITTEE

WHEREAS, The City Council of the City of Irvine DOES HEREBY RESOLVE as follows:

SECTION 1. CREATION – The Irvine Green Ribbon Environmental Committee (Committee) is established as an advisory body to the City Council.

a. Roles and Responsibilities – As an advisory body:

i. The Committee shall advise the City Council on sustainability policies related to energy, recycling and waste management, mobility, open space and water issues.
ii. Each member of the Committee shall serve in a voluntary capacity and receive no compensation for such services.
iii. The Committee’s scope shall not extend to matters which are otherwise within the jurisdiction of the City Council or Planning Commission, including 1) the adequacy or certification of any environmental documents; 2) the design, planning or construction of municipal or commercial development or rehabilitation projects; etc.

b. Committee’s Duties – The Committee’s duties shall include:

i. Make recommendations to the City Council on sustainability policies and programs related to energy, recycling and waste management, mobility, open space and water issues;
ii. Advise the City Council in the review of sustainability programs or projects the City is proposing; and
iii. Prepare a Work Plan outlining the focus for the Committee for review and approval by the City Council every two years. This will occur at the first Committee meeting every two years.

SECTION 2. MEMBERSHIP – The Committee will be comprised of ten members. The Committee will include seven (7) voting members and three (3) non-voting members, consisting of the following:

a. Appointment of Voting Members – The Committee will include seven (7) voting members, consisting of the following:

i. Five (5) Council-Appointed Members – Each City Councilmember will appoint one member to the Committee.
ii. Two (2) At-Large Appointed Members – A public recruitment will be conducted by City staff in odd numbered years, requesting applications to fill the two At-large members of the Committee. Staff recommendations will be brought to the City Council for final approval of the two At-Large appointed members.

b. Appointment of Non-Voting Members – The Committee will include three (3) non-voting members, consisting of the following:

i. Two members of the City Council (to be appointed by the City Council)
ii. One member of the Planning Commission (to be appointed by the Planning Commission)

c. Terms – Council appointed members shall serve at the pleasure of their respective appointing City Council member. At-Large appointed members shall be appointed by the City Council to serve two-year terms.

d. Selection Guidelines – Appointees may be Irvine residents or business persons and shall be chosen based on the following basis:

i. Professional or civic expertise in an environmental field, including, but not limited to, planning, environmental sciences, health, law or related field;
ii. Educational experience in an environmental field, including, but not limited to, planning, ecology, geology, hydrology, or related field; and
iii. Demonstrated concern for, and the desire to improve, the status of natural resources and environment of the City of Irvine.

e. Resignations – Whenever a member desires to resign from the Committee, he or she shall inform the Chairperson in writing.

f. Vacancies – In the event a vacancy is created, it shall immediately be filled by the same method by which the member was appointed.

SECTION 3. LEADERSHIP AND STAFF – The Committee shall have the constituted offices of Chairperson and Vice Chairperson.

a. Election – The Committee will elect officers at its first meeting, and annually at the first meeting of each calendar year thereafter.

b. Duties of Chairperson – The Chairperson shall maintain the general supervision, direction and control of the Committee meetings. The Chairperson shall preside at all meetings of the Committee, receive requests for agenda items from Committee members, represent and speak on the behalf of the Committee at City Council meetings, and shall have the power to appoint subcommittees of the Committee and subcommittee Chairpersons as necessary and receive reports of the subcommittee’s activities.
c. Duties of Vice Chairperson – The Vice Chairperson shall act in the absence of the Chairperson, perform all the duties of the Chairperson, and in so acting, shall have all the powers of the Chairperson.

d. Duties of Committee Staff – Committee staff from the Community Services Department shall be responsible for the following:

i. Creating Committee agendas, staff reports and presentations;
ii. Answering Committee member questions and providing email updates on pertinent information;
iii. Facilitating Committee and Subcommittee development of sustainability policy or project proposals, recommendations and options related to energy, recycling and waste management, mobility, open space and water issues; and
iv. Facilitating the annual Work Plan process.

SECTION 4. MEETINGS – The Committee shall meet regularly on a bimonthly schedule, on a day and time and place to be determined and fixed by the Committee and in accordance with the Ralph M. Brown Act.

a. Regular Meetings – The Committee shall meet on the fourth Thursday every other month (January, March, May, July, September, and November) at University Park Community Center. Committee meetings will be held from 4:30 – 6:30 p.m.

b. Special Meetings – Additional noticed meetings may be scheduled as necessary.

c. Public participation – All meetings shall be open to the public and members of the public are encouraged to participate.

d. Noticing – Agendas of the Committee shall be posted as required by the laws of the State of California to meet Brown Act requirements. Regular minutes of each meeting shall be maintained by the Secretary of the Committee.

e. Quorums – A majority of the voting members of the Committee shall constitute a quorum.

f. Voting – All decisions will require a majority vote of the seven voting members of the Committee.

g. Absences – Absences shall be reported to the Chairperson at least 24 hours prior to the scheduled meeting. If a committee member misses two consecutive meetings, the Chair of the Committee shall contact the absentee member and make a determination whether or not the absence is excused. If the Chair determines the absence is unexcused or unjustified, the Chair shall contact the
appointing City Councilmember, or City Council in the instance of a Member-at-Large absence, and notify them that the committee recommends removal of the member. The recommendation will then be brought before the Committee for approval.

SECTION 5. SUBCOMMITTEES – The Committee Chair has the power to appoint subcommittees of the Committee and subcommittee chairpersons as necessary and receive reports of the subcommittee’s activities.

a. Work Plan Subcommittee's Duties – The Work Plan Subcommittee's duties shall include:

i. Prepare a Work Plan outlining the focus for the Committee for review and approval by the City Council every two years. This will occur at the second Committee meeting every two years.

ii. Annual review of Committee Work Plan to identify progress, explore new actions and make recommendations to the Committee for new additions to the Work Plan.

iii. Staff maintains the master Work Plan on behalf of the Committee.

b. Other Subcommittee's Duties

i. Make recommendations to Committee on sustainability policies or projects related to energy, recycling and waste management, mobility, open space and water issues.

ii. Meet with community stakeholders to receive ideas and input for sustainability policies and projects.

iii. Work with staff to explore policy and project opportunities, options, partnerships, education and outreach.

iv. Prepare written reports or presentations to the Committee as appropriate.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 10th day of January, 2012.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE
STATE OF CALIFORNIA
COUNTY OF ORANGE SS
CITY OF IRVINE

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing resolution was duly adopted at regular meeting of the City Council of the City of Irvine, held on the 10th day of January, 2012.

AYES: 5 COUNCILMEMBERS: Agran, Choi, Krom, Lalloway and Kang

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None

CITY CLERK OF THE CITY OF IRVINE
Investment Advisory Committee Bylaws
BYLAWS OF THE
INVESTMENT ADVISORY COMMITTEE OF THE CITY OF IRVINE

ARTICLE I - PURPOSE

The purpose of the Investment Advisory Committee is to oversee the management of the investment portfolio through regular quarterly meetings. The committee will review investment transactions, discuss economic conditions and strategies regarding the management of the portfolio and report to individual council members on the meetings.

ARTICLE II - STRUCTURE

The committee shall be comprised of five members. Each councilmember shall be responsible for appointing one member to the committee with the term of the member being concurrent to the term of the councilmember making the appointment.

The chairperson and vice chairperson of the committee shall be elected by a majority vote of the members and shall hold the seat for a one-year term. These positions may be elected for two consecutive terms. At the end of the second consecutive term the members shall elect a new chairperson and vice chairperson.

ARTICLE III - MEETINGS

The meetings shall be held at least quarterly at Irvine City Hall. Each meeting shall be held on the Tuesday prior to the presentation of the quarterly report to Council on the status of the portfolio. Three members of the committee must be present to constitute a quorum.

ARTICLE IV - PARLIAMENTARY PROCEDURE

The rules contained in the current edition of Robert's Rules of order newly revised shall govern the committee in all cases to which they are applicable and in which they are not inconsistent with these Bylaws.

ARTICLE V - AMENDMENT OF BYLAWS

These Bylaws can be amended by a majority vote of the committee.
Irvine Child Care Committee
Bylaws
1.0 NAME

The name of this advisory body of the City of Irvine shall be the Irvine Child Care Committee (hereinafter “Committee”).

2.0 LOCATION

The principal office for the transaction of business is hereby fixed and located at One Civic Center Plaza in Irvine, California.

3.0 PURPOSE, MISSION, AND DUTIES

3.1 Purpose - The Committee’s purpose is to serve as an advisory body of the City of Irvine, reporting to the Community Services Commission (hereinafter “Commission”). The Committee shall provide input on the needs of the community pertaining to child care related issues.

3.2 Mission - The Committee’s mission is to develop recommendations related to the availability of affordable quality child care and early education in Irvine.

3.3 Duties - The Committee’s duties include, but shall not be limited to, working collaboratively with City departments and community organizations to enhance the provision of child care and early education services, providing outreach, and serving as a liaison to the community by informally sharing information learned at meetings, promoting City events for families and early childhood educators and sharing questions, concerns and ideas from the community with the Committee.

The Committee shall appoint one representative from their membership to serve on the Irvine Child Development Center Operating Board and one representative to serve on the Irvine Children, Youth and Families Advisory Committee, as appropriate.

The Committee shall report annually to the Commission on its goals and accomplishments.
4.0 GENERAL STATEMENT OF POLICY

Provisions of the Irvine Municipal Code, Title I, Division 4-Commissions and Committees, are applicable to all Commissions and Committees appointed by, or otherwise operating under authority of the City of Irvine, City Council and/or its properly appointed delegate.

5.0 MEMBERSHIP

The Committee shall consist of no more than fourteen (14) voting members consisting of Appointee and Liaison representatives, and shall serve pursuant to Section 5310 of the California Organizations Code. Accordingly, the Membership on the Committee is comprised of representatives meeting the following requirements and procedures:

5.1 Appointee Members

5.1.1 One representative from each of the following educational Organizations, Irvine Unified School District, University of California, Irvine, and Irvine Valley College, shall be appointed by their respective organizations and serve a term of office in accordance with that appointment.

5.1.2 Each member of the City Council shall appoint one member to the Committee for a total of five (5) members, to serve at the pleasure of their Council Member.

5.2 Liaison Members - Shall be selected through the following procedure: All interested persons who reside or are employed in the City of Irvine shall submit written applications and all applicants will be invited to an oral interview with a minimum of three (3) Committee Members and one (1) optional representative from the Community Services Commission. Term of office shall be a period of two years. Reappointment to another term is possible by complying with the procedure outlined herein.

5.2.1 Community Members - Two (2)

5.2.2 Center- or Home-based Child Care Provider Members who operate or work in a child care program licensed by the State of California Community Care Licensing Division - Two (2)

5.2.3 Parent/Guardian Members having children under the age of 12 at the time of application submittal - Two (2)

5.3 Resignation, Vacancies, and Removal

5.3.1 Resignation - Any Committee Member or officer may resign at any time by giving written notice to the Chair or Vice Chair.
5.3.2 **Vacancies** - In the event a vacancy is created, it shall be filled by the same method by which the vacancy was previously filled, at a timeline established by the Committee.

5.3.3 **Removal** - In the event a Committee Member fails to attend three (3) consecutive meetings, the Committee may, by motion, move to remove the Committee Member from the Committee. A majority vote of the Committee Members present at a duly constituted meeting shall be required to carry such a motion.

### 6.0 **VOTING**

6.1 **One Vote Per Member** - Committee Members shall be entitled to one vote.

6.2 **Proxy Votes** - No proxy votes are permitted.

### 7.0 **OFFICERS**

Officers of the Committee shall include a Chair and a Vice Chair, each of whom shall be a voting member of the Committee. The officers shall be elected by the Committee annually.

7.1 **Election** - Regular election of officers shall be held annually. The term of office shall be one (1) year, commencing upon election.

7.2 **Chair** - The Chair shall be responsible for the general supervision, direction, and control of the business and affairs of this Committee. The Chair shall preside over all meetings and represent the Committee to the Commission, the City Council and City staff.

7.3 **Vice Chair** - In the absence or resignation of the Chair, the Vice Chair shall perform all of the duties of the Chair, and in so acting, shall have all of the authority of the Chair. The Vice Chair shall have such other powers and perform such other duties as may be prescribed by the Committee.

### 8.0 **MEETINGS**

All meetings shall be open to the public and shall conform to the provisions of the "Ralph M. Brown Act".

8.1 **Agenda** - Agenda items may be submitted thirty (30) days in advance by any Committee Member upon notification to the Chair or City liaison. The agenda shall be established with items as coordinated by the Chair and City liaison.

8.2 **Procedures** - Robert's Rules of Order shall govern the general conduct of meetings.
8.3 **Quorum** - A majority of the Committee Members shall constitute a quorum. A majority vote of Committee Members present at a duly constituted meeting shall be required to carry a motion, proposal and/or resolution.

8.4 **Regular Meetings** - The Committee shall meet six (6) times each year per an annual schedule approved by the Committee at the last meeting of the previous year. All regular meeting agendas shall be posted in a location accessible to the public at least 72 hours before the time of the meeting and must describe the business to be transacted.

8.5 **Special Meetings** - A special meeting may be called at any time by the Chair or by a majority of the members of the Committee, by delivering personally, by mail, or by email written notice to each member and by circulating the agenda as required by law, and by posting the agenda in a location freely accessible to the public at least 24 hours before the meeting. The special meeting notice must specify both the time and the place of the meeting and the business to be transacted.

9.0 **BYLAWS**

Amendments to these bylaws are subject to approval and adoption by the Commission by a majority of the members present at a duly constituted meeting of the Commission.
COMMUNITY SERVICES COMMISSION RESOLUTION NO. 18-04

A RESOLUTION OF THE COMMUNITY SERVICES COMMISSION OF THE CITY OF IRVINE, CALIFORNIA, AMENDING THE BYLAWS OF THE IRVINE CHILD CARE COMMITTEE

WHEREAS, the City Council authorized the Community Services Commission to serve as the governing body of the Irvine Child Care Committee; and

WHEREAS, the Irvine Child Care Committee has approved revisions to its Bylaws to assure relevance to its mission; and

WHEREAS, the Bylaws amended are consistent with the City Council direction as to the mission of the Committee; and

NOW, THEREFORE, the Community Services Commission of the City of Irvine, DOES HEREBY RESOLVE as follows:

SECTION 1. That the above recitals are true and correct and are incorporated herein.

SECTION 2. Based on the above findings, the Community Services Commission of the City of Irvine DOES HEREBY RECOMMEND the adoption of the amended Bylaws of the Irvine Child Care Committee, attached hereto as Exhibit A.

SECTION 3. The Secretary to the Community Services Commission shall certify to the passage of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the Community Services Commission of the City of Irvine at a regular meeting held on the 6th day of June 2018 by the following roll-call vote:

AYES: 5 COMMISSIONERS: Trussell, Schultz, Johnson-Norris, Konte, and Owens

NOES: 0 COMMISSIONERS: None

ABSENT: 0 COMMISSIONERS: None

ABSTAIN: 0 COMMISSIONERS: None

[Signature]
CHAIR OF THE COMMUNITY SERVICES COMMISSION FOR THE CITY OF IRVINE

[Signature]
SECRETARY OF THE COMMUNITY SERVICES COMMISSION FOR THE CITY OF IRVINE

CSC Resolution No. 18-04
Irvine Children, Youth, and Families Advisory Committee Bylaws
BYLAWS
IRVINE CHILDREN, YOUTH, AND FAMILIES ADVISORY COMMITTEE

ARTICLE I
Name

The name of this public entity shall be the Irvine Children, Youth, and Families Advisory Committee (hereinafter ICYFAC), an advisory body of the City of Irvine.

ARTICLE II
Principal Office

The principal office for the transaction of business is hereby fixed and located in the City of Irvine, County of Orange, California.

ARTICLE III
Purpose and Mission

Section 1. Purpose

The purpose of ICYFAC is to serve as a public advisory body of the City of Irvine, reporting to the City’s Community Services Commission. ICYFAC’s mission and purpose are to be achieved in accordance with the goals and objectives of City Council and Community Services Commission.

Section 2. Mission

ICYFAC’s mission is to provide ongoing review and evaluation of the City of Irvine’s Strategic Plan for Children, Youth, and Families. ICYFAC creates a governance process for reviewing strategic plan progress, conducting indicator studies, monitoring funded activities and integrating community input on an ongoing basis.

ARTICLE IV
Membership

Section 1. Members

There shall be but one class of members in this organization, and it shall be designated as the Advisory Committee (hereinafter Committee) with membership not to exceed fifteen (15) voting members, serving pursuant to Section 5310 of the California Government Code. Any action taken by the Committee shall be deemed to be action taken by all members of ICYFAC.
Section 2. Composition of Committee

All Committee members must be a resident or employed in the City of Irvine.

Section 3. Selection of Members

The Mayor and each member of the City Council shall nominate one member to serve on the Committee. Two members of the Community Services Commission Children, Youth, and Families Task Force shall serve on the Committee and shall nominate two at-large community members and two youth members for Committee service. In addition, the following groups will be asked to nominate one person to represent the interests of their respective constituencies:

- Irvine Unified School District
- Tustin Unified School District
- Irvine Prevention Coalition
- Irvine Child Care Committee
- Irvine Public Safety (Ex-Officio)

All nominees shall be confirmed by the Community Services Commission. Members shall serve a two-year term, subject to the pleasure of the Community Services Commission and the constraints of these Bylaws. Members may be re-appointed for an unlimited number of terms. The Committee shall have the opportunity to review and comment to the Community Services Commission prior to appointment or reappointment of a member.

Section 4. Powers and Duties of the Committee

The Committee shall have all the primary powers and authorities necessary and convenient to carry out the business and affairs of ICYFAC, including the power to invite City residents to serve on ad hoc committees as non-voting participants.

Section 5. Liabilities and Property Rights of the Committee

No member of the Committee shall be personally liable for any indebtedness or liability, and any and all creditors shall look only to the City of Irvine's assets for payment.

ARTICLE V

Officers

Section 1. Officers

The officers of this organization shall be either: Co-Chairs and a Secretary; or a Chair and a Vice Chair. All officers shall be elected by and hold office at the pleasure of the Committee.
A. Co-Chairs

Subject to the control of the Committee, and in lieu of an elected Chair and Vice Chair, Co-Chairs shall share general supervision, direction, and control of the business and affairs of this organization. They shall preside at all the meetings of the Committee on a rotating basis.

B. Chair

Subject to the control of the Committee, the Chair shall have the general supervision, direction and control of the business and affairs of this organization. The Chair shall preside at the meetings of the Committee, and represent the Committee at its direction.

C. Vice Chair

In the absence or resignation of the Chair, the Vice Chair shall perform all of the duties of the Chair, and in so acting shall have all of the powers of the Chair. The Vice Chair shall have such other powers and perform such other duties as may be prescribed, from time to time, by the Committee.

Section 2. Election

Regular election of officers shall be held at the Committee's annual meeting, in the spring of odd-numbered years. The Committee shall elect its officers from its own number, by majority vote of members present. The term of office shall be two years, commencing upon election.

Section 3. Removal or Resignation of Officers

Any officer may resign from office at any time by giving written notice to the Chair or Co-Chair. Any such resignation shall take effect at the time of the receipt of such notification, unless otherwise specified in the resignation letter and agreed to by the Committee. Resignation as an officer does not constitute resignation from the Committee.

Any officer may be removed from office by a quorum of the Committee, using procedures specified in Article VII. Removal from office shall not constitute removal from the Committee.

Section 4. Vacancies in the Offices of the Organization

A vacancy in any office of this organization shall be filled for the remainder of the unexpired term at the earliest opportunity, at a regular meeting. The office shall be filled from the Committee's own number, by election of majority vote of members present.
ARTICLE VI
Meetings

Section 1. Notice of Meetings

All meetings shall be noticed as required by law.

Section 2. Quorum and Adjournment

The presence of at least 51% of Committee members shall constitute a quorum for the transaction of business at any meeting of the Committee. In the event that less than a quorum of members shall be present at any meeting, the Committee Secretary or the members of the Committee who are present may adjourn the meeting, but may not transact any business, and the time and place of holding the next meeting will be publicly noticed.

Section 3. Regular Meetings

The Committee shall establish the date and time to hold regular meetings at a frequency determined by the Committee to be necessary for the conduct of the Committee’s mission and purpose. All regular meeting notices shall be posted in a location freely accessible to the public at least 72 hours before the time of the meeting and must describe the business to be transacted.

Section 4. Special Meetings

A special meeting may be called at any time by the Chair or Co-Chair or by a majority of the members of the Committee, by delivering personally or by mail written notice to each member and notice as required by law for general circulation, and by posting notice in a location freely accessible to the public 24 hours before the time of the meeting. The special meeting notice must specify both the time and the place of the meeting and the business to be transacted.

Section 5. Attendance

Attendance at the regular meetings is a duty and obligation of each member. Any member who will be absent from any regular meeting or special meeting must notify the Committee secretary or the assigned City staff person by phone, email or letter received in advance of the meeting. Such advance notification shall constitute a "notified absence."
ARTICLE VII
Removal and Resignation of Members

Section 1. Resignation

A member may resign at any time by giving written notice to the Chair, Co-chair or the Committee Secretary. Any such resignation shall take effect at the time of the receipt of such notification, unless otherwise specified in the resignation letter and agreed to by the Committee.

Section 2. Involuntary Removal

Any member may be terminated from the Committee for lack of attendance or for cause by a vote of the majority of all Committee members.

A. Removal for Lack of Attendance

The Committee may, at its discretion, terminate a member's appointment for any of the following:

a. two consecutive unnotified absences; or
b. four consecutive absences; or

Any removal action taken because of absences must be taken at the next appropriate meeting date, and cannot be done at a later date.

B. Removal of Member for Cause

Members serve at the pleasure of the Community Services Commission, but the Committee may remove a member for cause. Such cause shall include, but is not limited to, violation of attendance requirements.

Section 3. Action on Removal

Action on termination must be through a meeting agenda item which specifies the member whose termination is sought and the reasons for such proposed action. In addition, the Committee Secretary must send a letter to such member, informing him/her of the proposed action. At the meeting, the member shall have an opportunity to be heard regarding the reasons why such termination should not occur. Termination of a member must be by a majority of the Committee, not by a majority of the quorum.
ARTICLE VIII
Amendment of Bylaws

These Bylaws may be amended or repealed and new bylaws adopted by a vote of the majority of members of the Committee at any meeting of such Committee.

Date: 7/15/09

Signed: [Signature]

Chair
Irvine Community Land Trust
BYLAWS OF
IRVINE COMMUNITY LAND TRUST

ARTICLE I

NAME OF CORPORATION

The name of this corporation is Irvine Community Land Trust (the "Corporation").

ARTICLE 2

OFFICES

Section 2.1 PRINCIPAL OFFICE

The principal office for the transaction of the business of the Corporation shall be fixed and located at 930 Roosevelt Avenue, Suite 106, Irvine, California, 92620. The Board of Directors (the "Board") may change the principal office from one location to another by resolution of the Board.

Section 2.2 OTHER OFFICES

The Board may at any time establish branch offices, either within or without the State of California, in order to advance the proper purposes of the Corporation.

ARTICLE 3

OBJECTIVES AND PURPOSES

The Corporation has been formed under the California Nonprofit Public Benefit Corporation Law for charitable purposes. No substantial part of the activities of the Corporation shall consist of carry on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office. The Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the charitable purposes described in its Articles of Incorporation.

The specific purpose of this corporation is to lessen the burdens of government by assisting the City of Irvine, California and other cities and communities within the County of Orange, California to ensure that their residents are able to secure housing by, among other things, developing, construction, financing, managing, selling, renting, subsidizing, and monitoring single- and multi-family housing, and to conduct or perform any ancillary or related activity in furtherance of the foregoing. The Corporation shall be permitted to conduct other lawful activities permitted under the California Nonprofit Public Benefit Corporation Law. The Corporation shall be governed and administered in accordance with the best practices of California nonprofit corporations, and it is not intended that the Corporation be governed and administered in accordance with the laws and procedures applicable to public agencies except to the extent required by law.
ARTICLE 4

DEDICATION OF ASSETS

The properties and assets of this Corporation are irrevocably dedicated to charitable purposes. No part of the net earnings, properties, or assets of this Corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or any Director or Officer of this Corporation. On liquidation or dissolution, all properties and assets remaining after payment, or provision for payment, of all debts and liabilities of this Corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE 5

DIRECTORS

Section 5.1    POWERS

(a) General Corporate Powers. The business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised by or under the direction of the Board.

(b) Specific Powers. Without prejudice to their general powers, the Board shall have the power to:

(i) Select and remove the officers of the Corporation (the "Officers"); prescribe any powers and duties for them that are consistent with the law, with the Articles of Incorporation, and with these Bylaws and fix their compensation, if any.

(ii) Change the principal executive office or the principal business office in the State of California from one location to another; cause the Corporation to be qualified to do business in any other state, territory, dependency, or country, and conduct business within or outside the State of California; and designate any place within or outside the State of California for the holding of any meeting.

(iii) Adopt, make, and use a corporate seal and alter the form of the seal.

(iv) Borrow money and incur indebtedness on behalf of the Corporation and cause to be executed and delivered for the Corporation's purposes, in the Corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt.

Section 5.2    NUMBER OF DIRECTORS
The authorized number of directors of the Corporation (the "Directors") shall be nine (9).

Section 5.3 APPOINTMENT AND TERM OF OFFICE OF DIRECTORS

(a) The Board shall be selected as follows:

(i) Seven (7) of the authorized Directors shall be elected by the Board and shall be residents of and/or work in the City of Irvine who are not residents of housing located on land owned by the Corporation (the "At-Large Directors").

(ii) Up to two (2) of the At-Large Directors may be nominated by the City of Irvine. The Executive Director shall notify the City of Irvine not less than thirty (30) days prior to the annual meeting of the Board that the City of Irvine may nominate up to two potential members to the Board to serve as At-Large Directors. The nomination may be accomplished by delivery of written notice from an authorized representative of the City of Irvine. Nominees of the City of Irvine need not be members of the Irvine City Council or officers or employees of the City of Irvine. At-Large Directors nominated by the City of Irvine may be elected by the members of the Board who were not nominated by the City of Irvine.

(iii) Once there are at least five hundred (500) affordable housing units in properties located on land owned by the Corporation, there shall be two (2) additional authorized Directors who shall be residents of affordable housing units in properties located on land owned by the Corporation (the "Resident Directors"). The Resident Directors shall be selected by the Board from residents who have applied for Resident Director positions and residents recommended by the managers of properties located on land owned by the Corporation, pursuant to a procedure established by the Board. The process described in this Section 5.3(a)(iii) does not create voting members within the meaning of the California Nonprofit Public Benefit Corporation Law. The Board shall amend this Section 5.3(a)(iii) if necessary to avoid the creation of voting memberships.

(b) All Directors shall serve terms of two (2) years. Directors may serve any number of consecutive terms. The Board may have up to nine (9) members, with a maximum of seven (7) At-Large Directors and a maximum of two (2) Resident Directors.

Section 5.4 QUALIFICATIONS OF BOARD MEMBERS

Any person 18 years of age or older may serve as a Director. At-Large Directors must also meet the additional qualifications set forth in Section 5.3(a)(i), and Resident Directors must also meet the additional qualifications set forth in Section 5.3(a)(iii).

Section 5.5 VACANCIES

(a) Events Causing Vacancy. A vacancy on the Board shall be deemed to exist at the occurrence of any of the following:

(i) The death, resignation, or removal of any Director.
(ii) The declaration by resolution of the Board of a vacancy in the office of a Director who has been declared of unsound mind by court order or convicted of a felony, or who has been found by final order or judgment of any court to have breached a duty under Chapter 2, Article 3 of the California Nonprofit Public Benefit Corporation Law.

(iii) The failure of the Board, at any meeting of the Board at which any Director(s) is to be appointed or elected, to appoint or elect the Director(s) to be appointed or elected at such meeting pursuant to the provisions of Section 5.3(b).

(iv) The increase of the authorized number of Directors.

(b) **Resignation.** Except as provided in this paragraph, any Director may resign, which resignation shall be effective on giving written notice to the Chair of the Board, the President, or the Secretary, unless the notice specifies a later time for the resignation to become effective. No Director may resign when the Corporation would then be left without a duly elected Director or Directors in charge of its affairs.

(c) **Removal.**

(i) Any At-Large Director or Resident Director may be removed by the Board upon the majority vote of the Directors then in office at a special meeting called for that purpose, or at a regular meeting.

(ii) Any Director who does not attend three (3) successive Board meetings will automatically be removed from the Board without Board resolution unless:

(A) The Director requests a leave of absence for a limited period of time, and the leave is approved by the Directors at a regular or special meeting. If such leave is granted, the number of Board members will be reduced by one in determining whether a quorum is or is not present.

(B) The Director suffers from an illness or disability which prevents him or her from attending meetings and the Board by resolution waives the automatic removal procedure of this subsection (ii).

(C) The Board agrees to reinstate the Director who has missed three (3) meetings.

(d) **Filling of Vacancies.** Any vacancy caused by the death, resignation, or removal of a Director shall be filled in accordance with the provisions of Section 5.3(a).

**Section 5.6** **ATTENDANCE AT BOARD MEETINGS**

Attendance at meetings of the Board shall be limited to members of the Board; the Executive Director and other Officers; employees, consultants, contractors and attorneys of the Corporation; and other persons invited to attend by the President or
Executive Director.

**Section 5.7  PLACE AND METHOD OF MEETING**

Meetings of the Board shall be held at the principal office of the Corporation unless a different place is designated in the notice of such meeting. All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings, may be held by telephone conference, video conference or electronic transmission in accordance with the requirements of California Corporations Code Section 5211.

**Section 5.8  ANNUAL MEETING**

The Board shall hold an annual meeting for purposes of electing Directors and Officers, designating committees, and transacting regular business. The President, Vice President, Secretary, Treasurer, and such other Officers as are desired by the Board, shall be selected at the annual meeting. The date, hour and place of the meetings shall be fixed by minute action of the Board, and shall be recorded in the official minutes of the Board.

**Section 5.9  SPECIAL MEETINGS**

Special meetings of the Board may be called by the President, Vice President, Secretary, or any two (2) Directors, upon such advance notice as required by California Corporations Code Section 5211.

**Section 5.10  WAIVER OF NOTICE**

The transactions of any meeting of the Board, however called and noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding of the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about lack of adequate notice.
Section 5.11 QUORUM

A majority of the Board shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 5.12. Every act or decision done or made by a majority of the Directors present at a meeting held at which a quorum is present shall be regarded as the act of the Board, subject to the provisions of these Bylaws and the California Nonprofit Public Benefit Corporation Law. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of any Director, if any action taken is approved by at least a majority of the quorum required for the meeting.

Section 5.12 ADJOURNMENT

A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 5.13 NOTICE OF ADJOURNMENT

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment. Such notice may be waived in the same manner as set forth under Section 5.10.

Section 5.14 COMPENSATION OF DIRECTORS

Directors and members of committees may receive reimbursement of expenses as may be determined by resolution of the Board to be just and reasonable. Directors shall not otherwise be compensated.

Section 5.15 RESTRICTION ON INTERESTED DIRECTORS

Not more than forty-nine percent (49%) of the persons serving on the Board at any time may be interested persons. An interested person is (a) any person compensated by the Corporation for services rendered to it other than those performed as a Director within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise; (b) any shareholder, employee or officer of any corporation, or partner or employee of any partnership, which has rendered compensated services to the Corporation within the previous twelve (12) months; and (c) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, mother-in-law, or father-in-law of any person described in (a) or (b) hereof. Any violation of the provisions of this paragraph shall not, however, affect the validity or enforceability of any transaction entered into by the Corporation.
ARTICLE 6

COMMITTEES

Section 6.1 COMMITTEES OF DIRECTORS

The Board may, by resolution adopted by a majority of the Directors then in office, designate one or more committees consisting of two (2) or more Directors to serve at the pleasure of the Board. Any member of any committee may be removed, with or without cause, at any time by the Board. Any committee, to the extent provided in the resolution of the Board, shall have all or a portion of the authority of the Board, except that no committee, regardless of the Board resolution, may:

(a) Fill vacancies on the Board or on any committee;

(b) Amend or repeal the Articles of Incorporation or Bylaws or adopt new Bylaws;

(c) Amend or repeal any resolution of the Board;

(d) Designate any other committee of the Board or appoint the members of any committee;

(e) Except as provided in Section 5233 of the California Nonprofit Public Benefit Corporation Law, approve any transaction (i) to which the Corporation is a party and as to which one or more Directors has a material financial interest, or (ii) between the Corporation and any corporation or entity in which one or more of its Directors has a material financial interest.

Section 6.2 AUDIT COMMITTEE

The Board shall establish an audit committee as and when required by Section 12586(e) of the California Government Code.

Section 6.3 ADVISORY COMMITTEE

The Board may appoint one or more advisory committees consisting of Directors and/or non-Directors for the purpose of advising the Board. Any advice rendered by such an advisory committee shall not be binding on the Board.

Section 6.4 MEETING AND ACTION OF COMMITTEES

The Board may adopt rules for any committee not inconsistent with the provisions of these Bylaws.
ARTICLE 7

OFFICERS

Section 7.1 OFFICERS

The Corporation shall have the following Officers: President, Vice President, Secretary, Treasurer, Executive Director, and such other Officers as the Board may designate by resolution and appoint pursuant to Section 7.3. Officers need not be Directors. One person may hold two (2) or more offices, except (i) an Officer may not be both President and Secretary, (ii) an Officer may not be both President and Treasurer, and (iii) the Executive Director may not hold any other office. Officers may receive such reasonable compensation, if any, for their services, and such reimbursement for expenses, as may be fixed and determined by the Board. The Board (or a committee of the Board) shall review and approve the compensation, including benefits, if any, of the President, Treasurer and Executive Director as and when required by State or Federal law.

Section 7.2 ELECTION OF OFFICERS

(a) The Officers of the Corporation, except the Executive Director and those appointed in accordance with the provisions of Section 7.3 of this Article, shall be chosen annually by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of any Officer under a contract of employment. In the event of removal or resignation of the President, the Vice President shall automatically assume the office of the President.

(b) The Executive Director of the Corporation shall be appointed by the Board, shall serve at the pleasure of the Board, and may be removed by the Board. The term of office, duties and compensation of the Executive Director shall be subject to a contract of employment as approved by the Board.

Section 7.3 SUBORDINATE OFFICERS

The Board may appoint, and may authorize the President or any other Officer to appoint, any other Officers that the business of the Corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified by the Bylaws or determined from time to time by the Board.

Section 7.4 REMOVAL OF OFFICERS

Subject to rights, if any, under any contract of employment, any Officer may be removed, with or without cause, by the Board, at any regular or special meeting of the Board, or, except in the case of an Officer chosen by the Board, by an Officer on whom such power of removal has been conferred by the Board.

Section 7.5 RESIGNATION OF OFFICERS

Any Officer may resign at any time by giving written notice to the Board, the
President, or the Secretary of the Corporation. Any resignation shall take effect at the date of receipt of that notice or at any later time specified in that notice. Unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract to which the Officer is a party.

**Section 7.6 VACANCIES IN OFFICE**

A vacancy in any Office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular appointments to that Office.

**Section 7.7 RESPONSIBILITIES OF OFFICERS**

(a) **President.** The President shall be the presiding officer of the Corporation. He or she shall have such other powers and duties as may be prescribed by the Board or these Bylaws. The President shall be empowered to act, speak for, or otherwise represent the Corporation between meetings of the Board within the boundaries of policies and purposes established by the Board and as set forth in the Articles of Incorporation and these Bylaws.

(b) **Vice President.** The Vice President shall be the Vice Chairman of the Board. At the request of the President or in case of his or her absence or disability, the Vice President shall perform all duties of the President and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the President. In addition, the Vice President shall perform such other duties as may from time to time be assigned to that office by the Board of Directors or the President.

(c) **Secretary.** The Secretary shall attend to the following:

(i) **Book of Minutes.** The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of minutes of all meetings and actions of Directors and committees of Directors, with the time and place of holding regular and special meetings, and if special, how authorized, the notice given, and names of those present at such meetings, and the proceedings of such meetings.

(ii) **Notices and Other Duties.** The Secretary shall give, or cause to be given, notice of all meetings of the Board required by the Bylaws to be given. The Secretary shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(d) **Treasurer.** The Treasurer shall be the chief financial officer of the Corporation and shall attend to the following:

(i) **Books of Account.** The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, and other matters customarily
included in financial statements. The books of accounts shall be open to inspection by any Director at all reasonable times. The Treasurer shall prepare or cause to be prepared financial statements of the Corporation, and shall prepare and file or cause to be prepared and filed the tax returns of the Corporation.

(ii) Deposit and Disbursement of Money and Valuables. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositors as may be designated by the Board; shall disburse, or cause to be disbursed, funds of the Corporation as may be ordered by the Board; shall render to the President and Directors, whenever they request it, an account of all financial transactions and of the financial condition of the Corporation; and shall have other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

(iii) Bond. If required by the Board, the Treasurer shall give the Corporation a bond in the amount and with the surety specified by the Board for the faithful performance of the duties of his or her office and for restoration to the Corporation of all its books, papers, vouchers, money, and other property of every kind in his or her possession or under his or her control on his or her death, resignation, retirement, or removal from office.

(e) Executive Director. The Executive Director shall be the chief of staff and executive officer of the Corporation and shall attend to the regular and daily operations of the Corporation. He or she shall have such other powers and duties as may be prescribed by the Board or these Bylaws. He or she shall be responsible to the Board, shall see that the Board is advised on all significant matters of the Corporation's business, and shall see that all orders and resolutions of the Board are carried into effect. He or she shall be empowered to act, speak for, or otherwise represent the Corporation between meetings of the Board within the boundaries of policies and purposes established by the Board and as set forth in the Articles of Incorporation and these Bylaws. He or she shall be responsible for keeping the Board informed at all times of staff performance as related to program objectives, and for implementing any personnel policies adopted by the Board.

ARTICLE 8

RECORDS AND REPORTS

Section 8.1 MAINTENANCE OF ARTICLES AND BYLAWS

The Corporation shall keep at its principal executive office the original or a copy of its Articles of Incorporation and Bylaws as amended to date.

Section 8.2 MAINTENANCE OF OTHER CORPORATE RECORDS

The accounting books, records, and minutes of the proceedings of the Board and any committee(s) of the Board shall be kept at such place or places designated by the Board, or, in the absence of such designation, at the principal office of the Corporation. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept in either written or typed form or in any other form capable of being converted into written,
typed, or printed form. To the extent permitted by law, other records may be kept in electronic form.

Section 8.3 INSPECTION BY DIRECTORS

Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the Corporation and each of its subsidiary corporations. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

Section 8.4 ANNUAL STATEMENT OF CERTAIN TRANSACTIONS AND INDEMNIFICATION

As soon as reasonable practicable after the close of the fiscal year, the Corporation shall prepare and mail or deliver to each Director an annual statement that includes (i) the financial statements of the Corporation accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation and (ii) the amount and circumstances of any transaction or indemnification of the following kind:

(a) Any transaction(s) in which the Corporation was a party and in which any Director or Officer of the Corporation had a direct or indirect financial interest.

(b) Any indemnifications or advances aggregating more than Ten Thousand Dollars ($10,000) paid during the fiscal year to any Officer or Director of the Corporation pursuant to Article 9 hereof: unless such indemnification has already been approved pursuant to Section 9.1.

ARTICLE 9

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 9.1 RIGHT TO INDEMNIFICATION

This Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any action or proceeding by reason of the fact that such person is or was an Officer, Director, or agent of this Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, or other enterprise, against expenses, judgment, fines, settlements, and other amounts actually and reasonable incurred in connection with such proceeding, to the fullest extent permitted under the California Nonprofit Public Benefit Corporation Law.

In determining whether indemnification is available to the Director, Officer or agent of this Corporation under California law, the determination as to whether the applicable
standard of conduct set forth in Section 5238 of the California Nonprofit Public Benefit Corporation Law has been met shall be made by a majority vote of a quorum of Directors who are not parties to the proceeding. The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 9.2 INSURANCE

This Corporation shall have the power and shall use its best efforts to purchase and maintain insurance on behalf of any Director, Officer, or agent of the Corporation, against any liability asserted against or incurred by the Director, Officer, or agent in any such capacity or arising out of the Director's, Officer's, or agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under Section 9.1 of these Bylaws; provided, however, that the Corporation shall have no power to purchase and maintain such insurance to indemnify any Director, Officer, or agent of the Corporation for any self-dealing transaction described in Section 5233 of the California Nonprofit Public Benefit Corporation Law.

ARTICLE 10

CONTRACTS AND LOANS WITH DIRECTORS AND OFFICERS

Section 10.1 CONTRACTS WITH DIRECTORS AND OFFICERS

(a) No Director or Officer of this Corporation, nor any other corporation, firm, association, or other entity in which one or more of this Corporation's Directors or Officers are directors or have a material financial interest, shall be interested, directly or indirectly, in any contract or other transaction with this Corporation, unless (i) the material facts regarding such Director's or Officer's financial interest in such contract or transaction and/or regarding such common directorship, officership, or financial interest are fully disclosed in good faith and are noted in the minutes, or are known to all members of the Board prior to consideration by the Board of such contract or transaction; such contract or transaction is authorized in good faith by a majority of the Board by a vote sufficient for that purpose without counting the vote or votes of such interested Director(s); (iii) prior to authorizing or approving the transaction, the Board considers and in good faith determines after reasonable investigation under the circumstances that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and (iv) this Corporation enters into the transaction for its own benefit, and the transaction is fair and reasonable to this Corporation at the time the transaction is entered into.

(b) The provisions of this Section do not apply to a transaction which is part of a charitable program of the Corporation if it: (i) is approved or authorized by the Corporation in good faith and without unjustified favoritism; and (ii) results in a benefit to one or more Directors or Officers or their families because they are in the class of persons intended to be benefited by the charitable program of the Corporation.
Section 10.2 LOANS TO DIRECTORS AND OFFICERS

The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or Officer, unless approved by the Attorney General of the State of California; provided, however, that the Corporation may advance money to a Director or Officer of the Corporation for expenses reasonable anticipated to be incurred in the performance of the duties of such Director or Officer, provided that in the absence of such advance such Director or Officer would be entitled to be reimbursed for such expenses by the Corporation.

ARTICLE 11

FISCAL YEAR

The fiscal year of the Corporation shall be the period commencing on July 1 and ending on the following June 30, provided that the fiscal year of the Corporation may be changed by resolution of the Board.

ARTICLE 12

CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, and the plural number includes the singular.

ARTICLE 13

AMENDMENTS

Section 13.1 ARTICLES

The Articles of Incorporation of the Corporation may be amended by a super-majority vote of two-thirds (2/3) of the Directors then in office.

Section 13.2 BYLAWS

Bylaws may be adopted, amended, or repealed by a majority vote of the Directors then in office.

ARTICLE 14

MEMBERS

This Corporation shall not have voting members within the meaning of the California Nonprofit Public Benefit Corporation Law. The Board may admit nonvoting members of one
or more classes having such rights and obligations as the Board shall deem appropriate from
time to time.

CERTIFICATE OF SECRETARY

I, the undersigned, the duly elected Secretary of Irvine Community Land Trust, a
California nonprofit public benefit corporation (the "Corporation"), do hereby certify:

That the foregoing Bylaws consisting of fourteen (14) pages (including this page)
were adopted as the Bylaws of the Corporation by the Board of the Corporation on May 21,
2018 and do now constitute the Bylaws of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 14th, day of

June, 2018.

Nancy Donnelly, Secretary

Revised October 7, 2008 by Resolution 08-005
Revised March 16, 2011 by Resolution 11-012
Revised December 19, 2012 by Resolution 12-018
Revised February 3, 2014 by Resolution 14-020
Revised May 19, 2014 by Resolution 14-021
Revised June 26, 2017 by Resolution 17-035
Revised May 21, 2018, 2018 by Resolution 18-039
Irvine Residents with Disabilities Advisory Board
BYLAWS OF
IRVINE RESIDENTS WITH DISABILITIES ADVISORY BOARD

ARTICLE I
Name

The name of this public entity shall be the Irvine Residents with Disabilities Advisory Board (hereinafter IRDAB), an advisory body of the City of Irvine.

ARTICLE II
Principal Office

The principal office for the transaction of business is hereby fixed and located in the City of Irvine, County of Orange, California.

ARTICLE III
Purpose and Mission

Section 1. Purpose

The purpose of IRDAB is to serve as a public advisory body of the City of Irvine, reporting to the City's Community Services Commission. The purpose of IRDAB is to be achieved in accordance with the goals and objectives of City Council and Community Services Commission.

Section 2. Mission

The mission of IRDAB is to identify and recommend programs and services that would meet the social, physical and emotional needs of residents who have disabilities, regardless of age. IRDAB will also provide advocacy and support for programs related to its mission; assess community needs and provide appropriate recommendations to City departments; and work collaboratively with organizations within Irvine and the surrounding area’s that have an impact on Irvine residents with disabilities.
ARTICLE IV
Membership

Section 1. Members

There shall be but one class of members in this organization, and it shall be designated as IRDAB member with membership not to exceed fourteen (14) voting members, serving pursuant to Section 5310 of the California Government Code. Any action taken by the Board shall be deemed to be action taken by all members of IRDAB.

Section 2. Composition of Board

All members must live or work in Irvine. The majority (51 percent) of IRDAB members must be persons with disabilities or directly related to a person with a disability.

Section 3. Selection of Members

Members shall be selected through a public recruitment conducted by City staff. Qualified applicants will be invited to participate in an oral interview with a panel identified by IRDAB.

All nominees shall be confirmed by the Community Services Commission. Members shall serve unlimited terms, subject to the constraints of these Bylaws. IRDAB shall have the opportunity to review and comment to the Community Services Commission prior to appointment of new members.

The IRDAB Recruitment process will be continuous and alternative applicants will be placed on a list for future vacancies.

Section 4. Powers and Duties of the Board

IRDAB shall have all the primary powers and authorities necessary and convenient to carry out the business and affairs of IRDAB, including the power to invite City residents to serve on ad hoc committees as non-voting participants. IRDAB shall recommend to the City Council through the Community Services Commission such actions as they deem appropriate.

Section 5. Liabilities and Property Rights of the Board

No member of IRDAB shall be personally liable for any indebtedness or liability, and any and all creditors shall look only to the City of Irvine's assets for payment.
ARTICLE V
Officers

Section 1. Officers

The officers of this organization shall be either: Co-chairs and a Secretary; or a Chair, and a Vice Chair. All officers shall be elected by and hold office at the pleasure of IRDAB.

A. Co-chairs

Subject to the control of IRDAB, and in lieu of an elected Chair and Vice Chair, Co-chairs shall share general supervision, direction, and control of the business and affairs of this organization. They shall preside at all IRDAB meetings on a rotating basis.

B. Chair

Subject to the control of IRDAB, the Chair shall have the general supervision, direction and control of the business and affairs of this organization. The Chair shall preside at the IRDAB meetings and represent IRDAB at its direction.

C. Vice Chair

In the absence or resignation of the Chair, the Vice Chair shall perform all of the duties of the Chair, and in so acting shall have all of the powers of the Chair. The Vice Chair shall have such other powers and perform such other duties as may be prescribed, from time to time, by IRDAB.

Section 2. Election

Regular election of officers shall be held at IRDAB's September meeting of even-numbered years. IRDAB shall elect its officers from its membership, by majority vote of members present. The term of office shall be two (2) years, commencing upon election.

Section 3. Removal or Resignation of Officers

Any officer may resign from office at any time by giving written notice to the Chair or Co-chair. Any such resignation shall take effect at the time of the receipt of such notification, unless otherwise specified in the resignation letter and agreed to by IRDAB. Resignation as an officer does not constitute resignation from IRDAB.
Any officer may be removed from office by a quorum of IRDAB, using procedures specified in Article VII. Removal from office shall not constitute removal from the IRDAB.

Section 4. Vacancies in the Offices of the Organization

A vacancy in any office of this organization shall be filled for the remainder of the unexpired term at the earliest opportunity, at a regular meeting. The office shall be filled from IRDAB's own membership, by election of majority vote of members present.

ARTICLE VI
Meetings

Section 1. Notice of Meetings

All meetings shall be noticed as required by law.

Section 2. Quorum and Adjournment

The presence of at least 51 percent of IRDAB members shall constitute a quorum for the transaction of business at any meeting of IRDAB. In the event that less than a quorum of members shall be present at any meeting, the members of IRDAB who are present may adjourn the meeting, but may not transact any business, and the time and place of holding the next meeting will be publicly noticed.

Section 3. Regular Meetings

The Board shall establish the date and time to hold regular meetings at a frequency determined by the Committee to be necessary for the conduct of the Board’s purpose and mission. All regular meeting notices shall be posted in a location freely accessible to the public at least 72 hours before the time of the meeting and must describe the business to be transacted.

Section 4. Special Meetings

A special meeting may be called at any time by the Chair or Co-chair or by a majority of the members of IRDAB, by delivering personally or by mail written notice to each member and notice as required by law for general circulation, and by posting notice in a location freely accessible to the public 24 hours before the time of the meeting. The notice must specify both the time and the place of the meeting and the business to be transacted.
Section 5. Attendance

Attendance at regular meetings is a duty and obligation of each member. Any member who will be absent from any regular or special meeting must notify the IRDAB Secretary or the assigned City staff person by phone, email or letter received in advance of the meeting. Such advance notification shall constitute a "notified absence."

ARTICLE VII
Removal and Resignation of Members

Section 1. Resignation

A member may resign at any time by giving written notice to the Chair, Co-chair or the IRDAB Secretary. Any such resignation shall take effect at the time of the receipt of such notification, unless otherwise specified in the resignation letter and agreed to by IRDAB.

Section 2. Involuntary Removal

Any member may be terminated from IRDAB for lack of attendance or for cause by a vote of the majority of all IRDAB members.

A. Removal for Lack of Attendance

IRDAB May, at its discretion, terminate a member's appointment for any of the following:

a. Two consecutive unnotified absences; or
b. Four consecutive absences; or
c. Five absences (not consecutive) in one calendar year.

Any removal action taken because of absences must be taken at the next appropriate meeting date, and cannot be done at a later date.

B. Removal of Member for Cause

Members serve at the pleasure of the Community Services Commission, but IRDAB may remove a member for cause. Such cause shall include, but is not limited to, violation of attendance requirements.
Section 3. Action on Removal

Action on termination must be through a meeting agenda item which specifies the member whose termination is sought and the reasons for such proposed action. In addition, the IRDAB Secretary must send a letter to such member, informing him/her of the proposed action. At the meeting, the member shall have an opportunity to be heard regarding the reasons why such termination should not occur. Termination of a member must be by a majority of IRDAB, not by a majority of the quorum.

ARTICLE VIII
Amendment of Bylaws

These bylaws may be amended or repealed and new bylaws adopted by a vote of the majority of members of IRDAB at any meeting of IRDAB.

Date: 10-7-14

Signed:__________________________
Chair
Orange County
Great Park Board
A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE ORANGE COUNTY GREAT PARK CORPORATION
AMENDING THE BYLAWS OF THE CORPORATION TO
MOVE THE ANNUAL MEETING

The Board of Directors of the ORANGE COUNTY GREAT PARK CORPORATION, a California nonprofit public benefit corporation (the "Corporation"), acting pursuant to the authority of Section 5211(b) of the California Nonprofit Corporation Law, does hereby resolve as follows:

1. Amendment to Bylaws. The Bylaws of the Orange County Great Park Corporation, a California Nonprofit Benefit Corporation, are hereby amended to read as follows:

   (b) Annual Meeting. The annual meeting of the board of directors shall be held each year in January, at a time designated by the board of directors, unless the board fixes another date and time. At each annual meeting, officers shall be elected and any other proper business may be transacted.

2. Resolution No. GPC 13-04 of the Board of Directors is repealed and superseded in its entirety by this Resolution.

PASSED AND ADOPTED by the Orange County Great Park Corporation Board of Directors at a regular meeting held on the 27th day of January 2015.

ATTEST:

SECRETARY/CLERK OF THE BOARD
STATE OF CALIFORNIA   
COUNTY OF ORANGE    SS
ORANGE COUNTY GREAT PARK CORPORATION   

I, Molly McLaughlin, Secretary/Clerk of the Board of the Orange County Great Park Corporation ("Corporation"), DO HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the Corporation, held on the 27th day of January 2015.

AYES:  5  DIRECTORS:  Krom, Lalloway, Schott, Shea and Choi

NOES:  0  DIRECTORS:  None

ABSENT:  0  DIRECTORS:  None

ABSTAIN:  0  DIRECTORS:  None

[Signature]
SECRETARY/Clerk OF THE BOARD

2  OCGP RESOLUTION 15-01
BYLAWS

OF

ORANGE COUNTY GREAT PARK CORPORATION
a California Nonprofit Public Benefit Corporation

Historical Notes:
adopted December 5, 2003 (Resolution No. GPC 03-01)
amended October 27, 2005 (Resolution No. GPC 05-06)
amended December 18, 2008 (Resolution No. GPC 08-06)
amended January 10, 2013 (Resolution No. GPC 13-01)
amended April 23, 2013 (Resolution No. GPC 13-04)
amended January 27, 2015 (Resolution No. GPC 15-01)
BYLAWS
OF
ORANGE COUNTY GREAT PARK CORPORATION
a California Nonprofit Public Benefit Corporation

ARTICLE I
NAME

The name of this corporation shall be the ORANGE COUNTY GREAT PARK CORPORATION.

ARTICLE II
OFFICES

Section 1. **Principal Office.** The principal office for the transaction of the business of the corporation ("principal executive office") is located at One Civic Center Plaza, Irvine, State of California. The directors may change the principal executive office from one location to another within Irvine, California. Any change of this location shall be noted by the Secretary/Clerk of the Board on these Bylaws opposite this section, or this section may be amended to state the new location.

Section 2. **Other Offices.** The board of directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

ARTICLE III
PURPOSES AND OBJECTIVES

Section 1. **Specific Purpose.** The specific and primary purpose of this corporation is to plan, design, develop, and operate property and improvements located in the City of Irvine and within the boundaries of the former United States Marine Corp Air Station El Toro, for public park, recreation, exposition and open space purposes as the "Orange County Great Park" project for the benefit of the residents of the City of Irvine, residents of Orange County, and others. This corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

Section 2. **General Purposes.** The general purposes of this corporation are the following:

(a) to receive, hold, and disburse gifts, bequests, devises, and other funds to advance the specific and primary purpose of this corporation;

(b) to own, lease, and maintain suitable real and personal property that is deemed necessary to accomplish the specific and primary purpose of this corporation; and

(c) to recommend, enter into, make, and perform, and carry out contracts that are deemed necessary to accomplish the specific and primary purpose of this corporation.
ARTICLE IV
NONPARTISAN ACTIVITIES

This corporation has been formed under the California Nonprofit Public Benefit Corporation Law for the purposes described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of this corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and this corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any cause or measure being submitted to the people for a vote.

This corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of its purposes and objectives described above.

ARTICLE V
DEDICATION OF ASSETS

The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member hereof or to the benefit of any private person. Upon the dissolution or winding up of this corporation, its assets remaining after payment, or provision for payment, of all of its debts and liabilities shall be distributed to the City of Irvine provided that it is then an organization described in Section 170(c)(1) of the Code or the corresponding provision of any future United States internal revenue law; and if not, such assets shall be distributed to a nonprofit fund, foundation or corporation designated by the board of directors which is organized and operated exclusively for charitable, educational or scientific purposes and which has established its tax exempt status under Section 501(c)(3) of the Code or the corresponding provision of any future United States internal revenue law.

ARTICLE VI
MEMBERS

Section 1. Directors as Members. This corporation shall have no members. Any action that would otherwise require approval by a majority of all members or approval by the members shall require only approval of the board of directors, as authorized by Section 5310 of the California Nonprofit Corporation Law.

Section 2. Meetings. There shall be no meetings of members as such. The persons constituting the board of directors may, at any given time and from time to time, act in their capacity as members pursuant to Section 1 of this Article VI, at meetings of the board of directors held as provided in Section 5 of Article VII of these Bylaws.
ARTICLE VII
DIRECTORS

Section 1. Powers.

(a) General Corporate Powers. Subject to the provisions of the California Nonprofit Corporation Law and any limitations in the articles of incorporation and these Bylaws, the business and affairs of this corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the board of directors; provided, however, that in order to preserve the nonprofit, exempt-from-income-tax status of this corporation, neither the board nor any member thereof shall do any act, or authorize or suffer the doing of any act by an officer or employee of this corporation, on behalf of the corporation, that is inconsistent with the articles or these Bylaws or the nonprofit purpose of this corporation. Any such act or acts shall be null and void.

(b) Specific Powers. Without prejudice to these general powers, and subject to the same limitations, the directors shall have the power to:

(i) Select and remove all officers, agents, and employees of this corporation; prescribe any powers and duties for them that are consistent with law, with the articles of incorporation, and with these Bylaws; and fix their compensation.

(ii) Change the principal office in Irvine, California, from one location to another within Irvine, California; and designate any place within Irvine, California, for the holding of any meeting or meetings.

(iii) Adopt, make, and use a corporate seal; and alter the form of the seal.

(iv) Borrow money and incur indebtedness on behalf of this corporation and cause to be executed and delivered for this corporation's purposes and objectives, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

Section 2. Number and Qualification of Directors.

(a) Number of Directors; Increase. The number of directors shall be five (5), who shall be the duly elected or appointed and qualified members of the City Council of the City of Irvine. The number of directors may be increased by resolution of the board of directors.

Section 3. Directors' Meetings.

(a) Place of Meetings. Meetings of the board of directors may be held at any place within the City of Irvine that has been designated from time to time by resolution of
the board or in the notice of the meeting. In the absence of such designation, meetings shall be held at the principal office of this corporation.

(b) Annual Meeting. The annual meeting of the board of directors shall be held each year in January, at a time designated by the board of directors, unless the board fixes another date and time. At each annual meeting officers shall be elected and any other proper business may be transacted.

(c) Other Regular Meetings. Other regular meetings of the board of directors may be held at such time and place as shall from time to time be fixed by the board of directors.

(d) Special Meetings. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman/chairwoman of the board, if any, the chief executive officer, or any two (2) directors. Notice of the time and place of special meetings shall be given to each director in accordance with the Ralph M. Brown Act, California Government Code Section 54950 et seq. ("Brown Act").

(e) Quorum. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors, subject to the more stringent provisions of the articles of incorporation, these Bylaws and the California Nonprofit Corporation Law, including, without limitation, those provisions in the articles of incorporation and these Bylaws relating to (i) the investment and management of the funds of this corporation and (ii) those provisions of the California Nonprofit Corporation Law relating to a) approval of contracts or transactions in which a director has a direct or indirect material financial interest, b) appointment of committees, and c) indemnification of directors.

(f) Adjournment. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

(g) Notice of Adjournment. Notice of the time and place of holding an adjourned meeting shall be given in accordance with the Brown Act.

(h) Open Meeting Law Compliance. Notwithstanding any other provision of these Bylaws, including but not limited to this Section 4 and Section 5 of Article VII, the corporation shall be subject to, and comply with, all of the provisions of the Brown Act; and the board of directors shall be deemed to be a "legislative body" as defined by the Brown Act.

(i) Rules of Order. Except as otherwise provided in these Bylaws, "Robert's Rules of Order, Newly Revised," shall guide the conduct of meetings of the board of directors. No resolution, proceeding or other action of the board of directors shall be invalidated, or the legality thereof otherwise affected, by the failure or omission to observe or follow such rules.
Section 4. **Compensation.** Directors shall receive such compensation for their services as may be fixed or determined by resolution of the board of directors.

Section 5. **Committees of the Board.** The board of directors may, by resolution, create one or more standing or ad hoc committees consisting of directors designated by, and to serve at the pleasure of, the board of directors, in accordance with the applicable requirements of the Brown Act, and in accordance with City policies and practices as they may be amended from time to time.

ARTICLE VIII
OFFICERS

Section 1. **Officers.** The officers of this corporation shall be a chief executive officer, deputy chief executive officer to serve in the absence of the chief executive officer, a Secretary/Clerk of the Board, and a chief financial officer. The chief executive officer shall be responsible for the duties of the “president” in accordance with any applicable requirements of the California Nonprofit Corporation Law. This corporation may also have, at the discretion of the board of directors, a chairman/chairwoman of the board, a vice chair, a treasurer, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article VIII. If there is a treasurer, he or she shall be the chief financial officer unless some other person is so appointed by the board of directors.

Section 2. **Election of Officers.** The officers of the corporation, except those appointed in accordance with the provisions of Section 3 of this Article VIII, shall be elected by the board of directors, and each shall serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. **Subordinate Officers.** The board of directors may appoint, and may authorize the chief executive officer or another officer to appoint, any other officers that the business of the corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined from time to time by the board of directors.

Section 4. **Removal of Officers.** Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the board of directors, at any regular or special meeting of the board, or, except in case of an officer elected by the board of directors, by an officer on whom such power of removal may be conferred by the board of directors.

Section 5. **Resignation of Officers.** Any officer may resign at any time by giving written notice to the board of directors. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.
Section 6. **Vacancies in Office.** A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular election to that office.

Section 7. **Chairman/Chairwoman of the Board.** The board of directors shall elect one of its members to serve as chairman/chairwoman of the board. The chairman/chairwoman of the board shall preside at meetings of the board of directors and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the board of directors or prescribed by the Bylaws.

Section 8. **Chief Executive Officer.** Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman/chairwoman of the board, the chief executive officer shall, subject to the control of the board of directors, generally supervise, direct, and control the business and the officers of the corporation. The chief executive officer shall have such other powers and duties as may be prescribed by the board of directors or the Bylaws.

Section 9. **Vice Chairman/Chairwoman.** The board of directors shall also elect one of its members to serve as vice chairman/chairwoman of the board. In the absence or disability of the chairman/chairwoman, the vice chairman/chairwoman shall perform all the duties of the chairman/chairwoman, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the chairman/chairwoman. The vice chairman/chairwoman shall have such other powers and perform such other duties as from time to time may be prescribed by the board of directors or Bylaws and the chairman/chairwoman of the board.

Section 10. **Secretary/Clerk of the Board.** The Secretary/Clerk of the Board shall attend to the following:

(a) **Book of Minutes.** The Secretary/Clerk of the Board shall keep or cause to be kept, at the principal office or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings, the number of directors present or represented at directors’ meetings, and the proceedings of such meetings.

(b) **Notices, Seal and Other Duties.** The Secretary/Clerk of the Board shall give, or cause to be given, notice of all meetings of the board of directors required by the Bylaws or by law to be given. The Secretary/Clerk of the Board shall keep the seal of the corporation in safe custody. The Secretary/Clerk of the Board shall have other powers and perform such other duties as may be prescribed by the board of directors or the Bylaws.

Section 11. **Chief Financial Officer.**

(a) **Books of Account.** The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of this corporation. The chief financial officer shall send or cause to be given to the directors such financial statements and reports as
are required to be given by law, by these Bylaws, or by the board. The books of account shall be open to inspection by any director at all reasonable times.

(b) Deposit and Disbursement of Money and Valuables. The chief financial officer shall deposit all money and other valuables in the name and to the credit of this corporation with such depositories as may be designated by the board of directors and the chief financial officer shall disburse the funds of this corporation as may be ordered by the board of directors. The chief financial officer shall render to the chief executive officer and directors, whenever they request it, an account of all transactions effected by the chief financial officer and of the financial condition of this corporation. The chief financial officer shall have such other powers and perform such other duties as may be prescribed by the board of directors or the Bylaws.

(c) Bond. If required by the board of directors, the chief financial officer shall give this corporation a bond in the amount and with the surety or sureties specified by the board of directors for faithful performance of the duties of such office and for restoration to this corporation of all its books, papers, vouchers, money, and other property of every kind in the possession or under control of the chief financial officer on such officer's death, resignation, retirement, or removal from office.

ARTICLE IX
INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS

Section 1. Right of Indemnity. To the fullest extent permitted by law, this corporation shall indemnify any present or former director, officer, employee or other "agent" of the corporation, as that term is defined in Section 5238 of the California Nonprofit Corporation Law, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that Section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. "Expenses," as used in this bylaw, shall have the same meaning as in Section 5238(a) of the California Corporations Code.

Section 2. Approval of Indemnity. On written request to the board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Corporations Code, the board shall promptly determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the board shall authorize indemnification. If the board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the board shall promptly call a meeting of members. At that meeting, the members shall determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the members present at the meeting in person or by proxy shall authorize indemnification.

Section 3. Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the board in a specific instance, expenses incurred by a person
seeking indemnification under Sections 5238(b) or 5238(c) of the California Corporations Code in defending any proceeding covered by those Sections shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the corporation for those expenses.

Section 4. Insurance. The corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer’s, director’s, employee’s, or agent’s status as such.

ARTICLE X
RECORDS AND REPORTS

Section 1. Maintenance of Corporate Records. The corporation shall keep:

(a) Adequate and correct books and records of account; and

(b) Written minutes of the proceedings of its board and committees of the board.

Section 2. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect the corporation’s books, records, documents of every kind, physical properties, and the records of each of its subsidiaries. The inspection may be made in person or by the director’s agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 3. Independent Audit and Annual Report. The corporation shall cause an independent annual financial audit and annual report to be sent to the directors within six (6) months after the close of the corporation’s fiscal year and shall cause the independent annual audit and annual report to be presented to the City Council within six (6) months after the close of the corporation’s fiscal year. If required by the Nonprofit Integrity Act, the audit and annual report shall be provided to the California Attorney General. That audit and report shall contain the following information, in appropriate detail, for the fiscal year:

(a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year.

(b) The principal changes in assets and liabilities, including trust funds.

(c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes.

(d) The expenses or disbursements of the corporation for both general and restricted purposes.

(e) Any information required by Section 4 below.
(f) Any applicable information required by the Nonprofit Integrity Act.

The annual independent audit and annual report shall be accompanied by any report on it of independent accountants.

This requirement of an annual independent audit and annual report shall not apply if the corporation receives less than Twenty-Five Thousand Dollars ($25,000.00) in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual independent audit and report must be furnished annually to all directors who request it in writing.

Section 4. Annual Statement of Certain Transactions and Indemnifications. As part of the annual report to all directors, or as a separate document if no annual report is issued, the corporation shall annually prepare and furnish to each director a statement of any transaction or indemnification of the following kind within one hundred twenty (120) days after the end of the corporation's fiscal year:

(a) Any transaction (i) in which the corporation, its parent, or its subsidiary was a party, (ii) in which an "interested person" had a direct or indirect material financial interest, and (iii) which involved more than Fifty Thousand Dollars ($50,000.00), or was one of a number of transactions with the same interested person involving, in the aggregate, more than Fifty Thousand Dollars ($50,000.00). For this purpose, an "interested person" is either of the following:

   (i) Any director or officer of the corporation, its parent, or subsidiary (but mere common directorship shall not be considered such an interest); or

   (ii) Any holder of more than ten percent (10%) of the voting power of the corporation, its parent, or its subsidiary. The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest, provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.

(b) Any indemnifications or advances aggregating more than Ten Thousand Dollars ($10,000.00) paid during the fiscal year to any officer or director of the corporation under Article IX of these Bylaws, unless that indemnification has already been approved by the directors under Section 5238(e) (2) of the California Corporations Code.

ARTICLE XI

COMPLIANCE WITH CONFLICT OF INTEREST LAWS

Section 1. Application of Political Reform Act. Notwithstanding any other provision of these Bylaws, the corporation shall be subject to, and comply with, all of the provisions of the Political Reform Act of 1976, as amended, Government Code Section 81000 et seq. The corporation shall be deemed to be an "agency," and each director and officer shall be
deemed to be a “designated employee,” as defined in the Political Reform Act). Each director and officer shall be subject to the conflict of interest reporting and disqualification requirements of the Political Reform Act. The board of directors shall adopt, periodically review, and, if necessary, amend, a “conflict of interest code” as such term is defined in the Political Reform Act.

Section 2. Application of Government Code Section 1090. City Directors shall be subject to the provisions of California Government Code section 1090 et seq. (“Section 1090”) and the corporation shall be deemed a “body” of which each director is a member.

ARTICLE XII
GENERAL CORPORATE MATTERS

Section 1. Fiscal Year. The fiscal year of this corporation shall commence on July 1 and conclude on the immediately following June 30.

Section 2. Budget. Prior to the commencement of each fiscal year of this corporation, the board of directors shall adopt a budget setting forth the estimated capital, operating and other expenditures required in connection with, and estimated receipts from, the activities of the corporation for such fiscal year; provided, however, that during its first fiscal year, the board of directors shall adopt a budget for that initial year within four months of the first meeting of the board of directors. No expenditure may be made or obligation incurred which, when added to any other expenditure for the fiscal year of the corporation, exceeds the budget for that fiscal year by more than $5,000.00 or any line item specified in the budget by more than five percent (5%).

Section 3. Investment Policy; Money Manager. The board of directors shall adopt and annually review and, if necessary, amend an investment policy for the corporation. The board of directors shall engage a reputable money management firm to manage and invest the idle funds of the corporation in accordance with such investment policy.

Section 4. Checks, Drafts, Evidence of Indebtedness. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to this corporation, shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by resolution of the board of directors.

Section 5. Corporate Contracts and Instruments; How Executed. The board of directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of this corporation, and this authority may be general or confined to specific instances; and, unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind this corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 6. Construction and Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above,
the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both a legal entity and a natural person.

Section 7. **Compliance With Public Records Act.** The Corporation shall comply with and be subject to the provisions of the California Public Records Act, California Government Code Section 6250 *et seq.* (“Public Records Act”). The Corporation shall be deemed a local agency as that term is used in the Public Records Act, and as such, shall be subject to all obligations and exemptions under the Public Records Act.

Section 8. **Compliance with Nonprofit Integrity Act.** The Corporation shall comply with applicable provisions of the Nonprofit Integrity Act.

ARTICLE XIII
AMENDMENTS

New Bylaws may be adopted or these Bylaws may be amended or repealed by approval of a majority of the board of directors.
CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary/Clerk of the Board of:

   ORANGE COUNTY GREAT PARK CORPORATION
   a California Nonprofit Public Benefit Corporation

2. That the foregoing Bylaws, comprising twelve (12) pages, constitute the Bylaws of said corporation as duly adopted at an adjourned regular meeting of the Board of Directors of the Corporation held on April 23, 2013.

   IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of April, 2013.

______________________________
SECRETARY/CLERK OF THE BOARD
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Planning Commission Bylaws
CITY COUNCIL RESOLUTION NO. 05-19


WHEREAS, Section 1-4-213 of the Code of the City of Irvine authorizes City Commissions to adopt rules and regulations for the conduct of their meetings, provided that such rules and regulations do not conflict with the City Code and further provided that the City Council approves such rules and regulations; and

WHEREAS, on June 11, 1991, the City Council adopted Resolution No. 91-83 approving the "By-laws of the Planning Commission of the City of Irvine;" and

WHEREAS, on January 23, 1992, the Planning Commission voted to amend Section 2.2 of the adopted By-laws; and

WHEREAS, on February 25, 1992, the City Council adopted the amended By-laws approved by the Planning Commission; and

WHEREAS, on February 17, 1994, the Planning Commission voted to amend Section 3.6 of the adopted By-laws; and

WHEREAS, on February 22, 1994, the City Council adopted the amended By-laws approved by the Planning Commission; and

WHEREAS, on February 17, 2005, the Planning Commission voted to amend Section 8.1 of the adopted By-laws

WHEREAS, the amended By-laws are consistent with the Code of the City of Irvine.

NOW, THEREFORE, the City Council of the City of Irvine HEREBY RESOLVES as follows:

SECTION 1. The amended "By-laws of the Planning Commission of the City of Irvine" attached hereto as Exhibit "A" are hereby approved.
PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 8th day of March 2005.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF IRVINE

I JERI L. STATELY, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 8th day of March 2005.

AYES: 5 COUNCILMEMBERS: Agran, Choi, Kang, Shea and Krom

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None

CITY CLERK OF THE CITY OF IRVINE

CC RESOLUTION 05-19
1.0 COMMISSION CREATION, TITLE, AND AUTHORITY

1.1 Creation - The Irvine Planning Commission is created under Section 5-3-101 of the Irvine Code of Ordinances.

1.2 Title - This body officially shall be known as the “Irvine Planning Commission.” The terms “Planning Commission” and “Commission,” where used in these By-Laws, also shall refer to and mean the Irvine Planning Commission.

1.3 Powers and Duties - The powers and duties of the Irvine Planning Commission are set forth in Section 5-3-108 of the Irvine Code of Ordinances.

2.0 MEMBERS, OFFICERS AND STAFF

2.1 Members - The Irvine Planning Commission consists of five members appointed by the City Council. Each member of the City Council shall appoint one Commissioner who shall serve at the pleasure of the member of the City Council who appointed such Commissioner; and

Such appointment shall be made by filing a written statement with the City Clerk setting forth:

(a) The fact of such appointments;

(b) The name of the person being appointed; and

(c) The date as of which such appointment is to be effective.

All Commissioners shall be appointed for a term of one (1) year, or until the expiration of the term of the member of the Council who appointed them, whichever occurs first; provided, however, a Commissioner is appointed and qualifies for office. Commissioners may be reappointed to any number of one year terms, consecutive or not.

A. Vacancy - members: Should any vacancy occur among the members of this Planning Commission other than by expiration, the Secretary immediately shall notify the City Manager. The City Council member who originally appointed the Commissioner who vacated his or her seat shall fill the vacancy by appointment for the unexpired portion of the term.

B. Vacancy - Chair or Vice Chair or Chair Pro Tern: Should the Chair, Vice Chair, or Chair Pro Tern cease to be members of the Commission, the remaining members shall elect a Chair, Vice Chair, or Chair Pro Tern at the second regular meeting thereafter, by a majority vote of members present, providing there is a quorum. The officer so elected shall serve for the unexpired portion of the term of office.
2.2 Officers - Officers of the Commission shall consist of a Chair, Vice Chair, or Chair Pro Tern and Secretary. The Chair, Vice Chair, and Chair Pro Tern shall be elected by the Commission at the annual meeting by plurality vote, providing there is a quorum present. The Chair, Vice Chair, or Chair Pro Tern may be removed at any time by the Commission upon a three-fifths (3/5) vote. If the Chair, Vice Chair, or Chair Pro Tern is removed by such a vote, a new election shall be held to fill the vacancy. The newly elected officer shall serve in that official capacity until the next annual meeting of the Planning Commission or until removed. The Secretary shall be and the term shall correspond to his official tenure.

A. Chair - Shall preside at all meetings and hearings of the commission; call special meetings in accordance with these Rules of Procedure; appoint committees and act as an ex-officio member of all committees so appointed; and sign documents in accordance with these Rules of Procedure and as prescribed by City Code or State law. He or she may represent the Commission before the City Council or appoint other members to do so.

B. Vice Chair - Shall perform all of the duties of the chair in case of his absence or disability and shall perform such other duties as may from time to time be assigned by the Chair.

C. Chair Pro Tern - Shall perform all the duties of the Chair in the absence of the Chair and Vice Chair.

D. Secretary - The Director of Community Development shall serve as Secretary to the Commission and as such administer the preparation of agenda, staff reports, minutes, and all other functions relative to the work and operation of the Planning Commission. In the event that the Chair, Vice Chair and Chair Pro Tern are absent or not permitted to serve, the Secretary shall perform the Chair's functions.

2.3 Staff

A. The Director of Community Development - Shall be an ex-officio member of the Commission and as such shall provide technical service to the Commission and shall attend all meetings.

B. The City Manager, City Attorney, and City Engineer shall be advisors or consultants to the Commission and as such may be called upon as follows:

   City Manager - upon request of the Chairman for specific matters.
   City Attorney - attendance at all regular meetings and as a consultant to the professional staff.
   City Engineer - Upon request of the Chairman for specific matters.
Clerk - Shall serve as the recording Secretary of the Planning Commission, and shall be responsible for taking and transcribing minutes, recording all votes, and receiving all documentary evidence.

3.0 INITIATING AN AGENDA ITEM

While the Commission has the authority on its own initiative to discuss and/or act on any matter within its statutory authority, subject to the requirements of the Section I.B-301(b) of the Irvine City Code, the normal procedure for initiating an item for Commission consideration is as set forth in the zoning and subdivision regulations of the City of Irvine. The following is a simplified summary for informational purposes only:

3.1 Commissioner Request - Any Planning Commissioner may initiate an item for Commission consideration by making such a request to the Secretary of the Planning Commission by no later than the legal deadline for noticing and placing the matter on the agenda.

3.2 Submission of Application - Any person, group or firm having a sufficient interest may make application for Planning Commission action by submitting proper application forms and all related material and specified fees to the Community Development Department of the City of Irvine, 1 Civic Center Plaza, Irvine, California 92606.

3.3 Deadlines - All applications must be submitted to the Department of Community Development in accordance with the deadlines that are published and available from that office.

3.4 Incomplete Submittals - Incomplete submittals will not be considered as filed and will not qualify for placement on a Commission agenda.

3.5 Pre-Application Assistance - The Staff is available for pre-application review and assistance to the applicant. This shall not be interpreted as meaning that the staff will prepare any of the required applications or documentation.

3.6 Consideration of Material Presented After Deadline - Unless otherwise required by law, the Planning Commission shall not consider any written material recommending the addition of, or alteration to, a resolution, condition of approval or finding if the same has not been submitted to the Secretary of the Planning Commission by no later than 5:00 p.m. on Wednesday, one week prior to the Planning Commission meeting. The above notwithstanding, the Chair of the Planning Commission may decide to accept written material recommending the addition of or alteration to a resolution, condition of approval or finding in exceptional circumstances if the same has not been timely submitted in accordance with the above deadline.
4.0 COMMISSION MEETING PROCEDURE

4.1 Call to Order - Meetings shall be called to order by the Chair of the Commission or, in his or her absence, the Vice Chair. If both are absent, the Commission members present shall select a Chair Pro Tem.

4.2 Regular Meetings - All regular meetings shall be conducted in the order set forth in the following paragraphs. The Chair, or a majority of the Commission, may direct an agenda item to be taken out of order, if it would serve the public to do so, under the following circumstances:

(a) A significant interest in a particular item;
(b) A significant number of people present for the hearing of a particular item;
(c) The length of the hearing anticipated with respect to a particular agenda item.

A. Call to Order - The Chair shall call the meeting to order.

B. Pledge of Allegiance - The Chair shall lead the Pledge of Allegiance to the Flag of the United States of America.

C. Roll Call - The Secretary shall record the attendance.

D. Agenda Review - The Chair shall review the agenda and solicit any deletions or additions. Additions may be made so long as such additions do not require the Planning Commission to "act" as defined in Section 6.3B of these By-Laws.

E. Public Comment - The Chair shall ask if any person wishes to speak to the Commission on any item not listed on the agenda. Comment is limited to three (3) minutes per speaker.

F. Presentations - The Staff shall make presentations to the Commission.

G. Consent Calendar - Any item which is not a public hearing as required by law, and which does not require specific findings of fact as required by law, may be placed on the "Consent Calendar." The approval of minutes shall be included within this category. Any Planning Commissioner may withdraw any item from the Consent Calendar by oral request prior to a vote on the Consent Calendar. After all requests for removal have been made, the Consent Calendar shall be voted on as a single item. A majority vote for approval of the Consent Calendar shall constitute the approval of each item thereon. Each removed item shall then be voted on individually.

H. Appeals - The Planning Commission shall hear any item properly appealed to the Planning Commission in the manner required by the

I. **Public Hearings** - All advertised public hearing items shall be heard in the following order:

1. Read title of public hearing.
2. Open Public Hearing
3. Receive Staff Report
4. Receive Public Input
   a. Applicant’s opening comments
   b. Comments of those in favor of project
   c. Comments of those against the project
   d. Applicant’s closing comments
5. Commission Questions
6. Close Public Hearing
7. Solicit Motion for Discussion
8. Discuss Motion
9. Vote (if Project requires Negative Declaration or Environmental Impact Report, vote on Neg. Dec. or EIR first.)
10. Reopen Public Hearing if item to be continued.

J. **Commission Business** - Any hearing item relating to the functioning of the Commission as required by law and which is not on the consent calendar shall be included on the agenda as “Commission Business.”

K. **Staff Reports** - Items responding to Commission requests and Staff Reports or updates on ongoing matters.

L. **Planning Commission Reports** - Any non-public hearing item to be discussed or reported on at the request of a Planning Commissioner.

M. **Additional Matters** - Any items not fitting within the above categories.

N. **Adjournment** - Chair solicits motion to adjourn to next meeting.

5.0 **PRESENTATIONS BEFORE THE COMMISSION**

5.1 **Rules of Presentation.**

A. **Addressing Commission.**

   (1) **Securing permission, right to address Commission.** Any person desiring to address the Commission shall first secure the permission of the presiding officer; provided, however, that under the following headings of business, unless the presiding officer rules otherwise, any qualified and interested person shall have the right to address the Commission upon obtaining recognition by the presiding officer:
(a) **Staff reports.** Interested parties or their authorized representatives may address the Commission with regard to written communications referred to in the report of the city manager or any department head.

(b) **Public hearings.** Interested persons or their authorized representatives may address the Commission in regard to matters then under consideration.

(c) **Public comment.** Any person may address the Commission by oral communication on any matter over which the Commission has control; provided, however, that preference shall be given to those persons who have notified the Secretary of the Commission of their desire to speak in order that the same may appear on the minutes of the Commission.

(2) **Manner of addressing Commission; time limit.** Spokesman for group. Persons addressing the Commission shall step up to the microphone at the table, give their name and address in an audible tone of voice for the record, and, unless further time is granted by the presiding officer, limit their address to five (5) minutes; providing, however, that when public comment first occurs in the order of business for Commission meetings, as provided by resolution, each person addressing the Commission shall limit his or her remarks to three (3) minutes, unless further time is granted by the presiding officer. All remarks shall be addressed to the Commission as a body and not to any member thereof. No person, other than a member of the Commission, and the person having the floor, shall be permitted to enter into any discussion without the permission of the presiding officer.

Whenever a group of persons wishes to address the Commission on the same subject matter, it shall be proper for the presiding officer to request that a spokesman be chosen by the group to address the Commission, and in case additional matters are to be presented at the time by any other member of said group, to limit the number of persons addressing the Commission, so as to avoid unnecessary repetition before the Commission. The presiding officer may interrupt a witness and instruct him to redirect his remarks or cause him to terminate his remarks when they are not relevant to the matter before the Commission.

(3) **Addressing the Commission after close of public hearing.** After a public hearing has been closed and before action is taken by the Commission, no person shall address the Commission without first securing the permission of the presiding officer.

B. **Decorum.**
(1) By Commission Members. While the Commission is in session, the members must preserve order and decorum, and a member shall neither, by conversation or otherwise, delay or interrupt the proceeding or the peace of the Commissioner disturb any member while speaking or refuse to obey the orders of the Commission or the presiding officer, except as otherwise provided in these By-Laws.

(2) By other persons. Persons who substantially impair or disturb a Commission meeting by intentionally committing acts in violation of the provisions of these By-Laws or of implicit customs or usages governing the conduct of Planning Commission meetings shall be advised of such violation and requested to curtail such acts by the presiding officer. If, after such advice and request, such persons refuse or fail to curtail such acts, the presiding officer may cause any peace officer present to eject them from the council chamber or place them under arrest and be charged with a violation of California Penal Code Section 403. In the event that the meeting is interrupted so as to render the orderly conduct of such meeting infeasible, and order cannot be restored, the Commission may order the room cleared and continue in session.

6.0 PUBLIC HEARINGS

6.1 Notices - Notice of the time, place, proposed action and reason for the public hearing shall be given as required by law.

6.2 Posting of Notice and Agenda.

A. Posting of Notice and Agenda - In addition to the requirements set forth in Section 6.1 above, for every regular or special meeting, the Secretary of the Planning Commission or his or her designee shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all the items of business to be discussed at the meeting. The notice and agenda may be combined in a single document.

B. Location of Posting - The notice and agenda shall be posted at the Police office at 1 Civic Center Plaza in the City of Irvine.

C. Posting for Regular Meetings - For any regular meeting of the Planning Commission, the notice and agenda shall be posted no later than seventy two (72) hours prior to the time set for the meeting.

D. Posting for Special Meetings - For any special meeting of the Planning Commission, the notice and agenda shall be posted in a...
location that is freely accessible to the public no later than twenty four (24) hours prior to the time set for the meeting.

E. Posting for Emergency Meetings - In case of an emergency as described in Section 8.7 of these By-Laws, the Commission may, pursuant to Government Code Section 54956.5, hold an emergency meeting without complying with the normal notice or posting requirements.

F. Affidavit of Posting - Immediately following the posting of the notice and agenda, the City Clerk or his or her designee shall complete an Affidavit of Posting, in a form to be developed by the City Clerk. The Affidavit of Posting shall indicate the time of the posting, the location(s) of the posting, and shall be signed under penalty of perjury. The City Clerk shall retain all such affidavits, together with a copy of each notice and agenda so posted, in his or her files.

6.3 Agenda - Contents.

A. Description of Matters - All items of business to be discussed at a meeting of the Planning Commission shall be briefly described on the agenda. The description need not set out the specific action or alternatives which will be considered by the Planning Commission, but should contain sufficient detail so that a person otherwise unaware could determine the general nature or subject matter of the item by reading the agenda.

B. Limitation of Actions by Agenda - No action shall be taken by the Planning Commission, on any item not appearing on a posted agenda, subject only to the following exceptions:

(1) Upon a determination by a majority vote of the Commission that an emergency situation exists, as defined in Section 54956.5 of the California Government Code.

(2) Upon a determination by a two-thirds vote of the Commission, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that the need to take action arose subsequent to the agenda being posted.

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

"Action taken" as used herein shall mean a collective decision made by a majority of the Members of the Planning Commission, a collective commitment or promise by a majority of the Members of the Planning Commission to make a positive or a negative decision, or an actual vote by a majority of the Members of the Planning Commission upon a motion, proposal, resolution, order, or ordinance. With regards to matters not on
the agenda, the Members of the Planning Commission may ask questions of persons who raise such matters during the Public Comment period or otherwise, infra, but such questions should be limited to informational purposes, and the Planning Commission should avoid discussions of the merits or giving directions regarding such subjects. With regards to matters raised by Members of the Planning Commission under Staff and Planning Commission Reports, such matters which are not on the Agenda should normally be placed on future agenda. These matters may not be discussed and no action may be placed on such matters without being placed on a subsequent Agenda. The above notwithstanding, “Action Taken” shall not refer to a request by the Planning Commission that Staff return with information at some future date.

7.0 STANDING RULES

7.1 Quorum - At any meeting of the Planning Commission, a quorum shall consist of three of the appointed members of the Commission. No action shall be taken in the absence of a quorum, except that those members present shall be entitled by motion to adjourn the meeting to another date.

7.2 Voting

A. One vote per member - The Chair, Vice Chair, Chair Pro Tern and each Commissioner shall be entitled to one vote.

B. Proxy votes - No proxy votes are permitted.

C. Roll Call - A roll call shall be taken upon the passage of all resolutions. Such votes shall be recorded in the minutes of the proceedings of the Commission. Upon the request of any Commission, a Roll Call vote shall be taken and recorded on any vote. Whenever a Roll Call vote is in order, the Clerk shall call the names of the members in alphabetical order- except that the name of the presiding officer shall be called last.

D. Disqualification from voting - In the event that any Commission member present shall have a conflicting personal interest of any kind in a matter then before the Planning Commission, he or she shall announce that he or she has a conflict and disqualify himself or herself from voting upon the matter. The minutes shall reflect that no vote was cast by said member. For the purposes of these By-Laws, “conflicting personal interest” shall mean conflict of interest as used in California Government Code Sections 1090, 1091, 1091.5, 87100, 87103, Title 2 Chapter 7Section 18700 et seq. of the California Administrative Code or any other situation when the Commission member does not believe that he or she can make an impartial or unbiased decision.

E. Majority vote - A majority vote of the members present shall be necessary for the adoption of any proposed action, resolution or
other voting matter except where otherwise set forth in these By-Laws.

F. **Tie Votes** - Tie votes shall be recorded as a failure of action to pass. A tie vote on a motion defeats the motion.

G. **Absence from Meeting** - Any member absent from a meeting shall not be allowed to vote on any matter discussed at that meeting Until said member has listened to the tapes of the meeting, reviewed the minutes, if prepared, and all correspondence pertaining to the subject, and discussed the matter with staff.

H. **Silence constitutes affirmative vote.** Unless a member of the Commission has been permitted to and abstains from voting, pursuant to paragraphs (D) and (G) above, such member's silence shall be recorded as an affirmative vote.

7.3 **Signature**

A. **Official signature** - Such maps, plans or papers as have been approved by resolution of the Planning Commission, duly recorded in the minutes, or where otherwise required by law, shall be signed by the Secretary.

In form, the official signature shall be substantially as follows:

```
IRVINE PLANNING COMMISSION

       (signature)

       (name, title)
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B. Minutes shall also be signed by the Secretary or his or her staff.

C. In all other matters, the Secretary shall have the power to execute, verify or attest to documents on behalf of this Commission.

7.4 **Procedural Questions** - The Secretary shall rule on all procedural questions, and may call upon the City Attorney for his opinion.

7.5 **Suspension of Rules** - The Commission may suspend any of these rules by a unanimous vote of the members present to the extent that such suspension does not conflict with controlling state law.

7.6 **Parliamentary Procedure.**

A. **Presiding officer may debate and vote.** The presiding officer may move, second and debate from the chair, subject only to such limitations of debate as are by these rules imposed on all members.

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Planning Commission Bylaws
of the Commission and shall not be deprived of any of the rights and
privileges of a member of the Commission by reason of acting as
the presiding officer.

B. Getting the floor; Improper references to be avoided. Every
member of the Commission desiring to speak shall address the
chair, and upon recognition by the presiding officer, shall confine
their remarks to the question under debate, avoiding all
personalities and indecorous language.

C. Interruptions. A member of the Commission once recognized shall
not be interrupted when speaking unless it be a call to order, or as
herein otherwise provided. A member of the Commission called to
order shall cease speaking until the question of order be
determined, and if in order, shall be permitted to proceed.

D. Motion to reconsider. A motion to reconsider any action taken by the
Commission may be made only on the day such action was taken.
Such motion must be made by a Commissioner on the prevailing
side of the vote, but may be seconded by any member of the
commission and may be made at any time and have precedence
over all other motions. It shall be debatable. Nothing herein shall be
construed to prevent any member of the Commission from making
or remaking the same or other motion at a subsequent meeting of
the Commission.

E. When remarks of Commission entered in minutes. A member of the
Commission shall have the right, upon request to the presiding
officer, to have an abstract of his or her statement on any subject
under consideration by the Commission entered in the minutes.
Such an abstract shall contain the statement of each other
Commission member who addresses the subject at that time.

F. When synopsis of debate entered in minutes. The Secretary of the
Planning Commission may be directed by the presiding officer, with
consent of the Commission, to enter in the minutes a synopsis of
the discussion on any subject under consideration by the
Commission.

G. Disqualification and abstention. No member of the Commission
shall be permitted to abstain from voting unless the member has
disqualified him or herself pursuant to Section 7.2D of these By-
Laws. Unauthorized abstentions shall be recorded by the Clerk of
the Planning Commission as an affirmative vote.

H. Rules of order. Except as otherwise provided in this chapter,
"Robert's Rules of Order, Newly Revised," shall govern the conduct
of the meetings of the Commission. However, no resolution,
proceeding or other action of the Commission shall be invalidated,
or the legality thereof, otherwise affected, by the failure or omission
to observe or follow said rules.

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Planning Commission Bylaws
8.0 MEETINGS

8.1 Regular Meetings - Regular meetings of the Planning Commission shall be held in the City Council Chambers, City Hall; 1 Civic Center Plaza, Irvine, California, at 5:30 P.M., on the first and third Thursday of each month. At such meetings, all matters properly on the Agenda, shall be considered, as set forth in Section 4.0 of these By-Laws. Unless a majority of the members present votes otherwise, the meetings of the Commission shall adjourn at or before 11:00 p.m. If the business of the Commission has not been completed by 11:00 p.m., the Commission may vote to remain in session until all or a portion of its remaining business has been completed. All matters remaining after the Commission adjourns shall be continued to a subsequent regular meeting of the Commission.

8.2 Adjourned Meetings - Any regular meeting may be adjourned to a designated time and place and when so adjourned shall be considered as a regular meeting.

8.3 Special Meetings - A special meeting may be called at any time by the Chairman of the Commission, or by a majority of the Commission's members, by delivering personally or by mail written notice to each member of the Commission and to each local newspaper of general circulation, radio or television station requesting notice in writing. The notice shall be delivered personally or by mail and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at these meetings by the Commission. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the ex-officio secretary a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting. The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

8.4 Annual Meeting - The Annual Meeting of the Planning Commission shall be the first regular meeting in the month of January of each year. Such meeting shall commence with the election of a Chair, Vice Chair, and Chair Pro Tern for the ensuing year and such other business as shall be scheduled by the Commission.

8.5 Meetings on Holidays - When a regular meeting falls on a holiday, the meeting shall be held on the next city business day or on a day to which the previous meeting was adjourned.

8.6 Cancellation of Meeting - Whenever reasons exist, lack of a quorum, no business for Commission consideration, or other good and valid reason, a
meeting may be canceled by the Chair. Such cancellation may be made at any time prior to the meeting but must be in writing and submitted to the Secretary at least twenty-four (24) hours prior to the scheduled meeting, and shall state the reason for said cancellation.

8.7 Special Emergency Meetings - Special Emergency Meetings may be called by the Chair or by a majority of the Planning Commission where prompt action is necessary due to the disruption or threatened disruption of public facilities as that phrase is used in Government Code Section 54956.5.

8.8 Adjourned Meetings - The Planning Commission may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. If a quorum is not present, less than a quorum may so adjourn. If all Members are absent from any regular or adjourned regular meeting, the Secretary of the Planning Commission may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be delivered personally to each Commissioner member at least three (3) hours before the adjourned meeting. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held, within 24 hours after the time of adjournment. When a regular or adjourned regular meeting is adjourned as provided herein, the resulting adjourned regular meeting shall be a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.

8.9 Closed Sessions - The Planning Commission may hold closed sessions during a regular or special meeting when authorized by State law. This shall include, but not be limited to situations under which the Planning Commission is meeting with the District Attorney, Attorney General, Sheriff or Police on a matter involving a threat to a public building; a matter relating to the appointment, employment evaluation of performance of dismissal of a public employee; any meeting with the City's real estate negotiator involving a discussion of the purchase, sale, exchange or lease of real property; or any matter involving pending litigation. If a closed session is included on the agenda, the description of the item need only identify the statutory basis for the closed session, and need not include the specific topic which is the subject of the closed session. During closed session, the Planning Commission may exclude any person or persons which it is authorized by State law to exclude from a closed session. However, no minutes of the proceedings of the Planning Commission during a closed session are required. The minutes of the Planning Commission meeting shall reflect that the closed session occurred and the authority for the closed session. There shall be no closed session during any emergency meeting.
Senior Citizens Council Bylaws
CITY COUNCIL RESOLUTION NO. 10-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE AMENDING CITY COUNCIL RESOLUTION NO. 07-113 OUTLINING THE DUTIES, RESPONSIBILITIES AND BYLAWS OF THE IRVINE SENIOR CITIZENS COUNCIL

WHEREAS, the Irvine City Council discussed the expansion of participation by senior-serving organizations in the selection of Senior Citizens Council At-large members; and

WHEREAS, the Irvine City Council discussed the process for filling at-large member vacancies from most recent recruitment, and

WHEREAS, the Irvine City Council expressed an interest in extending the terms of the Senior Citizens Council Chair and Vice Chair to two years and conducting elections of officers in January of even-numbered years, and

WHEREAS, the Irvine City Council expressed an interest in modifying the Senior Citizens Council attendance requirements to not exceed more than three absences per year from regular meetings with responsibility placed on the Chair and Vice Chair for approval of meeting absences.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY RESOLVE as follows:

SECTION 1. CREATION - The Senior Citizens Council shall be comprised of seven members; five members of which are to be appointed, one by each member of the City Council, and two at-large members through a public recruitment process.

A member of the Senior Citizens Council must be a resident of the City of Irvine, and each member of the Senior Citizens Council must have attained the minimum age of fifty-five years at the time of his/her appointment.

The City Manager shall appoint a staff member as liaison to the Senior Citizens Council.

SECTION 2. PROCESS FOR SELECTION OF AT-LARGE MEMBERS - A public recruitment will be conducted by City staff in October of odd-numbered years requesting applications to fill the two at-large members of the Senior Citizens Council. Qualified applicants (Irvine resident over the age of 55) will be invited to participate in an oral
interview with a five-member panel identified by an ad hoc committee of the Senior Citizens Council. The five-member panel will select two at-large members to serve a two-year term beginning November of even-numbered years. Formal notification will be provided to City Council of the newly selected at-large members of the Senior Citizens Council. At conclusion of recruitment, an eligibility list of qualified applicants will be established for filling future at-large member vacancies during the current two-year term. A new eligibility list will be established every two years through a public recruitment process.

SECTION 3. TERMS OF OFFICE - The City Council-appointed members of the Senior Citizens Council shall serve at the pleasure of the City Council until replacements are appointed. The two at-large members selected through the public recruitment process shall serve a two-year term. The two at-large members will serve a term to begin November 2009, and expire at the end of October 2010. Thereafter, the two at-large members will serve for two years, beginning November of odd numbered years.

The Senior Citizens Council shall elect a chairperson and vice-chairperson from its membership in January of even-numbered years to serve a two-year term. The chairperson or vice-chairperson may not serve more than two consecutive terms in their respective offices.

If an at-large position on the Senior Citizens Council becomes vacant, the Chair of the Senior Citizens Council may fill the position from the most recent eligibility list with an appointment offered to the next person on the eligibility list, and the person appointed will serve for the remainder of the unexpired term.

Should there be no other qualified applicants on the eligibility list, the Senior Citizens Council Chairperson shall, by appointment, fill the vacant at-large position when the chairperson has solicited input from all members of the Senior Citizens Council, and the person appointed will serve for the remainder of the unexpired term.

SECTION 4. DUTIES - The Senior Citizens Council shall have the duty to:

(a) Act in an advisory capacity to the City Council in establishing policy on all matters pertaining to the special interests and concerns of senior citizens;

(b) Act as a sounding board for individuals, schools and organizations that have an interest in senior citizens activities and programs;

(c) Consider the proposed annual budget for the City employees serving at the senior centers, and make recommendations with respect thereto to the City Council and the City Manager;

(d) Advise in the planning of facilities, transportation, activities, and services and programs for the senior community;

(e) Recommend policies for the acquisition, development, use and improvement of land and facilities relating to senior citizens and subject to the rights and powers of the City Council; and
(f) Perform such other duties as may be prescribed by the City Council.

SECTION 5. APPOINTMENT - The Senior Citizens Council may establish committees and sub-committees for the purpose of performing specific tasks within the respective general areas of concern of the Senior Citizens Council.

SECTION 6. APPROPRIATIONS - The City Council shall include in its annual budget such appropriations of funds as, in its opinion, shall be sufficient for the efficient and proper functioning of the Senior Citizens Council.

SECTION 7. COMPENSATION AND EXPENSES - This section has been modified by City Council Resolution No. 04-11, February 10, 2004. Please see Compensation and Expenses portion of Introduction section in the Commission Orientation packet.

SECTION 8. COMMUNICATIONS - Matters coming from the public including communications from individuals, community associations, and civic organizations, to be assured of consideration and action at a meeting of the Senior Citizens Council, must be received in writing at least fourteen days preceding the Senior Citizens Council meeting. All written communications from the Senior Citizens Council shall be sent out over the signature of the chairperson of that Council, or a designated officer thereof.

SECTION 9. ATTENDANCE - Members of the Senior Citizens Council are to attend and participate in all meetings of the Senior Citizens Council. Any member who is absent from three regular meetings of the Senior Citizens Council without the approval of the Senior Citizens Council Chairperson and Vice-Chairperson, shall be deemed to have resigned from the Senior Citizens Council and the Senior Citizens Council chairperson shall notify the City Council.

SECTION 10. MEETINGS - QUORUM - The Senior Citizens Council shall meet regularly on the third Thursdays of the month at 9:00 a.m., at either the Lakeview or Rancho Senior Centers, except as otherwise provided by law. Special meetings may be called by the chairperson or the majority members of the Senior Citizens Council. All meetings shall be open to the public except as otherwise authorized by the laws of the State of California. Regular minutes of each meeting shall be maintained by the Senior Citizens Council, or its designee, and posted in the senior centers for public review. A majority of the voting members of the Senior Citizens Council shall constitute a quorum.

SECTION 11. EMERITUS MEMBERS - Emeritus members to the Senior Citizens Council shall be appointed at the discretion of the City Council. Emeritus members will be appointed as honorary, non-voting members with lifelong terms. Emeritus members are not entitled compensation and will not sit at the dais during Senior Citizen Council meetings.

SECTION 12. AMBASSADOR PROGRAM - Senior Services Ambassadors shall be appointed at the discretion of the Senior Services staff. Ambassadors will volunteer their time to assist in the promotion of senior activities and services. Roles of the Ambassadors may include, but are not limited to, the following:
o Provide leadership and guidance with senior-serving clubs and organizations;
o Provide presentations to community groups to increase awareness of activities and services provided by the City of Irvine;
o Represent the senior community on special task forces and committees; and
o Provide input to Senior Citizens Council and staff on senior-related issues.

SECTION 13. - The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 11th day of May, 2010.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA )
COUNTY OF ORANGE ) SS
CITY OF IRVINE )

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 11th day of May, 2010.

AYES: 5  COUNCILMEMBERS: Agran, Choi, Krom, Shea and Kang
NOES: 0  COUNCILMEMBERS: None
ABSENT: 0  COUNCILMEMBERS: None

CITY CLERK OF THE CITY OF IRVINE
Sports Committee
IRVINE SPORTS COMMITTEE

BYLAWS

1. **Purpose**
The Irvine Sports Committee shall serve as an advisory to the City Council and Community Services Commission, providing input into the needs of the community pertaining to Irvine’s youth athletic programs, sports facilities, and athletic services. Among the primary objectives, the Committee will ensure an equitable allocation of athletic facilities and maximum participation for all Irvine youth in the athletic endeavors of their choice, regardless of ability. The Sports Committee shall represent the entire athletic community in their deliberations and actions.

2. **Membership**
Membership shall be defined by organization. Irvine-based youth sports organizations shall be entitled to one representative designated by the president. Voting members are defined in Section Four. Member organizations must meet the following requirements:
   A. The City of Irvine Reservation Policy for category II organizations.
   B. The organization’s primary mission must include youth sports leagues or activities.
   C. Organizations must be represented at no less than three-fourths of regularly scheduled Sports Committee meetings in one calendar year. Failure to adhere to attendance requirements will result in organization losing voting privileges for six months. Organization’s losing voting privileges shall not lose field allocation rights.
   D. Community Service Commission appointed Members-at-Large. Members-at-Large must not miss more than two consecutive regularly scheduled Sports Committee meeting. Failure to meet this requirement will result in a letter from the Sports Committee Chairperson to the Community Services Commission advising them of this situation.

3. **Quorum**
The presence of at least 51% of the voting members shall constitute a quorum for transaction of business at Committee Meetings. When less than a quorum of members is present, the Committee may not take action on any business item and the Chairperson or Vice Chairperson may elect to adjourn the meeting.

4. **Membership Voting Privileges**
Organizations are categorized by sport into either recreation or club programs. Representatives on the Sports Committee will have voting privileges under the following conditions:
   A. Community Services Commission appointed Members-At-Large shall cast one vote.
B. Committee Members representing an organization with youth participation of 200 or more shall cast one vote.

C. Committee Members representing organizations with youth participation under 200 will have one vote; as long as there is only one organization in the sport and category (see above). If there are two or more organizations in the same sport in the same category, and all have less than 200 participants, the organization having the largest number of participants shall cast one vote. In the event all organizations have the same number of participants, the organization with the longest continuous membership on the Sports Committee shall cast the vote.

5. **Procedures**
Meetings shall be conducted under the rules of the Brown Act. Robert’s Rules of Order shall serve as a guide. Objections to these procedures must be identified at the time of their occurrence.

6. **Agenda and Minutes**
The minutes of the prior meeting and agenda for the upcoming meeting shall be distributed in accordance with the California Government Code Section 54954.2 of the Brown Act. Agenda items may be submitted by any Sports Committee member upon notification to the Chairperson or Community Services Department liaison. The agenda shall be established with items as coordinated by the Chair and City liaison. Special Meetings added to the regular schedule shall make every effort to provide for the schedules of all Committee Members to ensure maximum participation.

7. **Action**
All actions shall be advisory to the Community Services Commission and City Council. Upon direction and adoption of a Committee motion, actions shall be transmitted by the Chair in writing, or in person at a Community Services Commission meeting. When agenda items requiring a vote are distributed less than thirty days prior to a meeting, Sports Committee representatives shall have the right to consult their organization’s Board of Directors prior to a final vote.

8. **Officers**
The Irvine Sports Committee shall elect a Chairperson and Vice-Chairperson. These officers shall be elected by vote of the Sports Committee membership at the last regular meeting of the calendar year. The Sports Committee Chair shall preside over all meetings and is responsible for approval of the final agenda. The Chairperson shall represent the Sports Committee to the Community Services Commission, the City Council and City staff. The Vice-Chair shall assume these duties in the absence of the Chair.
9. **Duties**
The Sports Committee shall undertake responsibility for reviewing maps, architectural drawings and other initial data for proposed parks with athletic amenities and facilities to determine accuracy, orientation and utilization possibilities for athletic demands within the City of Irvine. The Committee shall make recommendations in allocation of fields per City Council approved procedures to insure full utilization, on a seasonal basis. The Sports Committee shall further advise appropriate Commissions and other City officials of their findings and recommendations for necessary actions to preclude deficiencies in the athletic functions of the City of Irvine.

10. **Amendment**
These Bylaws may be amended by a three-fourth (3/4) vote of the voting membership. If any amendment conflicts with the City Council resolution establishing the Sports Committee, the resolution takes precedence, unless changed by City Council action.
Transportation Commission
BY- LAWS
OF THE
TRANSPORTATION COMMISSION
OF THE
CITY OF IRVINE
(February 2017)

EXHIBIT A
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BY- LAWS
IRVINE TRANSPORTATION COMMISSION

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PREAMBLE

These By-Laws of the Transportation Commission of the City of Irvine ("By-Laws") have been adopted as a policy guideline on February 28, 2017, by the City Council of the City of Irvine.

1.0 COMMISSION CREATION, TITLE AND AUTHORITY

1.1 Creation - The Irvine Transportation Commission is created under Section 6-3-901 of the Irvine Code of Ordinances.

1.2 Title - This body officially shall be known as the "Irvine Transportation Commission." The terms "Transportation Commission" and "Commission," where used in these By-Laws, also shall refer to and mean the Irvine Transportation Commission.

1.3 Powers and Duties - The powers and duties of the Irvine Transportation Commission are set forth in Section 6-3-905 of the Irvine Code of Ordinances.

1.4 Power of Appointment - The Irvine Transportation Commission shall have the power to appoint subcommittees of their own members and to appoint committees to perform tasks within the Commission’s general area of concern, but only in conformity with the statutory authority of the Commission.

2.0 MEMBERS, OFFICERS AND STAFF

2.1 Members - The Irvine Transportation Commission consists of five members, who are residents of the City of Irvine, appointed by the City Council. Each member of the City Council shall appoint one Commissioner who shall serve at the pleasure of the member of the City Council who appointed such Commissioner; and

Such appointment shall be made by filing a written statement with the City Clerk setting forth:

(a) The fact of such appointments;
(b) The name of the person being appointed; and

(c) The date as of which such appointment is to be effective.

All Commissioners shall serve at the will of the member of the City Council who appointed such Commissioner for a term expiring upon the expiration of the term of the member of the Council who appointed them; provided that a Commissioner's term shall terminate on the date either that the Commissioner resigns from office or that the Council member replaces the Commissioner prior to the expiration of the Commissioner's term.

A. **Vacancy – members:** Should any vacancy occur among the members of this Transportation Commission other than by expiration, the Secretary immediately shall notify the City Manager. The City Council member who originally appointed the Commissioner who vacated his or her seat shall fill the vacancy by appointment for the unexpired portion of the term.

B. **Vacancy – Chair or Vice Chair or Chair Pro Temp:** Should the Chair, or Vice Chair cease to be members of the Commission, the remaining members shall elect a Chair or Vice Chair at the next regular meeting thereafter, by a majority vote of members present, providing there is a quorum. The officer so elected shall serve for the unexpired portion of the term of office.

2.2 **Officers** – Officers of the Commission shall consist of a Chair, Vice Chair, Chair Pro Temp and Secretary. The Chair and Vice Chair shall be elected by the Commission at the annual meeting by plurality vote, providing there is a quorum present. The Chair Pro Temp shall be selected on an ad hoc basis by the members present at a meeting at which the Chair and Vice Chair are either not present or unable to participate. The Secretary shall be an ex-officio member of the Transportation Commission and the term shall correspond to his or her official tenure.

A. **Chair:** Shall preside at all meetings and hearings of the Commission; call special meetings in accordance with these Rules of Procedure; appoint committees and act as an ex-officio member of all committees so appointed; and sign documents in
accordance with these Rules of Procedure and as prescribed by City Code or State law. He or she may represent the Commission before the City Council or appoint other members to do so.

B. **Vice Chair:** Shall perform all of the duties of the chair in case of his or her absence or disability and shall perform such other duties as may from time to time be assigned by the Chair.

C. **Chair Pro Tem:** Shall perform all the duties of the Chair in the absence of the Chair and Vice Chair. The Chair Pro Tem shall hold office until the adjournment of the meeting or the Chair or Vice Chair are present and able to participate, whichever occurs first.

D. **Secretary:** The City of Irvine Manager of Transportation or his or her designee shall serve as Secretary to the Commission and, as such, administer the preparation of agenda, staff reports, minutes and all other functions relative to the work and operation of the Transportation Commission. In the event that the Chair and Vice Chair are not present at a meeting, the Secretary shall open the meeting and call for an election of a Chair Pro Tem. In the event that the Chair, Vice Chair and Chair Pro Tem are absent or not permitted to serve, the Secretary shall perform the Chair's functions.

### 2.3 Staff

A. **The Manager of Transportation** or his or her designee shall be an ex-officio member of the Commission and as such shall provide technical service to the Commission and shall attend all meetings. The Transportation Manager shall serve as the Recording Secretary of the Transportation Commission, and shall be responsible for arranging to provide for taking and transcribing minutes, recording all votes and receiving all documentary evidence.

B. **The City's professional staff** shall be available as advisors to the Commission, when needed, for specific matters.
3.0 INITIATING AN AGENDA ITEM

While the Commission has the authority on its own initiative to discuss and/or act on any matter within its statutory authority, subject to the requirements of Section 1-4-210 of the Irvine City Code, the normal procedure for initiating an item for Commission consideration is set forth herein:

3.1 Commissioner Request - Any Transportation Commissioner may initiate an item on any matter within the Commission's statutory authority for Commission consideration by making such a request to the Secretary consistent with City Council policy by no later than the legal deadline for noticing and placing the matter on the agenda.

3.2 Submission of Application - Any person, group or firm having a sufficient interest may make application for Transportation Commission action on any matter within the Commission's statutory authority by submitting proper application forms and all related material and specified fees to the Community Development Department of the City of Irvine, 1 Civic Center Plaza, Irvine, California 92623.

A. Deadlines - All applications must be submitted to the Department of Community Development in accordance with the deadlines that are published and available from that office.

B. Incomplete Submittals - Incomplete submittals will not be considered as filed and will not qualify for placement on a Commission agenda.

C. Pre-Application Assistance - The City professional staff is available for pre-application review and assistance to the applicant. This shall not be interpreted as meaning that the staff will prepare any of the required applications or documentation.

4.0 COMMISSION MEETING PROCEDURE

4.1 Call to Order - Meetings shall be called to order by the Chair of the Commission or, in his or her absence, the Vice Chair or, in his or her absence, the Secretary.

4.2 Regular Meetings - All regular meetings shall be conducted in the order set forth in the following paragraphs. The Chair, or a majority of the Commission, may direct an agenda item to be taken out of order, if it would serve the public to do so, under the following circumstances:
- A significant interest in a particular item;
- A significant number of people present for the hearing of a particular item;
- The length of the hearing anticipated with respect to a particular agenda item; or
- The item is to be continued to another meeting.

A. **Call to Order** - The meeting of the Commission shall be called to order as provided in Section 4.1 above. In the event the Chair and Vice Chair are not present, the Secretary shall follow the call to order with an election of a Chair Pro Tem.

B. **Pledge of Allegiance** - The Chair or the Chair’s designee shall lead the Pledge of Allegiance to the Flag of the United States of America.

C. **Roll Call** - The Secretary or his or her designee shall record the attendance.

D. **Agenda Review** - The Chair shall review the agenda and solicit any deletions or additions. Additions may be made so long as such additions do not require Commission action as precluded in Section 6.3B of these By-Laws.

E. **Oral Communications/Public Comment** - The Chair shall ask if any person wishes to speak to the Commission on any item not listed on the agenda. Comment is limited to three (3) minutes per speaker.

F. **Consent Calendar** - Any item which is not a public hearing as required by law, and which does not require specific findings of fact as required by law, may be placed on the “Consent Calendar.” The approval of minutes shall be included within this category. Any Transportation Commissioner may withdraw any item from the Consent Calendar by oral request prior to a vote on the Consent Calendar. After all requests for removal have been made, the Consent Calendar shall be voted on as a single item. A majority vote for approval of the Consent Calendar shall constitute the approval of each item thereon. Each removed item shall then be voted on individually.

G. **Appeals** - The Transportation Commission shall hear any item within the Commission’s statutory authority properly appealed to the
Transportation Commission in the manner required by the Irvine Municipal Code. The decisions of the Transportation Commission shall be final in all matters except as otherwise provided by law.

H. Public Hearings - All advertised public hearing items shall be heard in the following order:

1. Read Agenda Description of Matter
2. Open Public Hearing
3. Receive Staff Report
4. Receive Public Input
5. Commission Questions
6. Close Public Hearing
7. Solicit Motion for Discussion
8. Discuss Motion
9. Vote
10. Reopen Public Hearing if item to be continued

I. Regular Calendar Items - Any hearing item relating to the functioning of the Commission as required by law and which is not on the consent calendar shall be included on the agenda as "Regular Calendar Items."

J. Items for Future Agendas - Any hearing items within the Commission’s statutory authority requested to be presented or discussed by the Commission for future agendas.

K. Additional Business - Any items within the Commission’s statutory authority not fitting within the above categories.

L. Adjournment - Chair solicits motion to adjourn to next meeting.

5.0 PRESENTATIONS BEFORE THE COMMISSION

5.1 Rules of Presentation

A. Addressing Commission

(1) Securing permission, right to address Commission - Any person desiring to address the Commission shall first secure the permission of the presiding officer; provided, however, that under the following headings of business, unless the presiding officer
rules otherwise, any qualified and interested person shall have the right to address the Commission upon obtaining recognition by the presiding officer:

(a) **Staff reports** - Interested parties or their authorized representatives may address the Commission with regard to written communications referred to in staff reports before the Commission.

(b) **Public hearings** - Interested persons or their authorized representatives may address the Commission in regard to matters then under consideration.

(c) **Public comment** - Any person may address the Commission by oral communication on any matter over which the Commission has control; provided that those persons have notified the Secretary of their desire to speak.

(2) **Manner of addressing Commission; time limit, spokesperson for group.** - Persons addressing the Commission shall step up to the microphone at the table, give their name in an audible tone of voice for the record, and limit their address to three (3) minutes. All remarks shall be addressed to the Commission as a body and not to any member thereof. No person, other than a member of the Commission, and the person having the floor, shall be permitted to enter into any discussion without the permission of the presiding officer.

Whenever a group of persons wishes to address the Commission 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 Commission, and in case additional matters are to be presented at the time by any other member of said group, to request that the group limit the number of persons addressing the Commission, so as to avoid unnecessary repetition before the Commission. The presiding officer may interrupt a witness and instruct him or her to redirect their remarks or cause him or her to terminate their remarks when they are not relevant to the matter before the Commission.

(3) **Addressing the Commission after close of public hearing**
After a public hearing has been closed and before action is
taken by the Commission, no person shall address the Commission without first securing the permission of the presiding officer so to do.

B. Decorum

(1) By Commission Members - While the Commission is in session, the members must preserve order and decorum, and a member shall neither, by conversation or otherwise, delay or interrupt the proceeding or the peace of the Commission or disturb any member while speaking or refuse to obey the orders of the Commission or the presiding officer, except as otherwise provided in these By-Laws.

(2) By other persons - Persons who substantially impair or disturb a Commission meeting by intentionally committing acts in violation of the provisions of these By-Laws or of implicit customs or usages governing the conduct of Transportation Commission meetings shall be advised of such violation and be requested to curtail such acts by the presiding officer. If, after such advice and request, such persons refuse or fail to curtail such acts, the presiding officer may cause any peace officer present to remove them from the council chamber. In the event that the meeting is interrupted so as to render the orderly conduct of such meeting infeasible, and order cannot be restored, the Commission may order the room cleared and continue in session.

6.0 PUBLIC HEARINGS

6.1 Notices - Notice of the time, place, proposed action and reason for the public hearing shall be given as required by law.

6.2 Posting of Notice and Agenda

A. Posting of Notice and Agenda - In addition to the requirements set forth in Section 6.1 above, for every regular or special meeting, the City Clerk or his or her designee shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all the items of business
to be discussed at the meeting. The notice and agenda may be combined in a single document.

B. **Location of Posting** - The notice and agenda shall be posted at the Irvine Civic Center at 1 Civic Center Plaza in the City of Irvine.

C. **Posting for Regular Meetings** - For any regular meeting of the Transportation Commission, the notice and agenda shall be posted no later than seventy two (72) hours prior to the time set for the meeting.

D. **Posting for Special Meetings** - For any special meeting of the Transportation Commission, the notice and agenda shall be posted in a location that is freely accessible to the public no later than twenty four (24) hours prior to the time set for the meeting.

E. **Posting for Emergency Meetings** - In case of an emergency as described in Section 8.6 of these By-Laws, the Commission may, pursuant to Government Code Section 54956.5, hold an emergency meeting without complying with the normal notice or posting requirements.

F. **Affidavit of Posting** - Immediately following the posting of the notice and agenda, the City Clerk or his or her designee shall complete an Affidavit of Posting, in a form to be developed by the City Clerk. The Affidavit of Posting shall indicate the time of the posting, the location(s) of the posting, and shall be signed under penalty of perjury. The City Clerk shall retain all such affidavits, together with a copy of each notice and agenda so posted, in his or her files.

6.3 **Agenda – Contents**

A. **Description of Matters** - All items of business to be discussed at a meeting of the Transportation Commission shall be briefly described on the agenda.

B. **Limitation of Actions by Agenda** - No action shall be taken by the Transportation Commission, on any item not appearing on a posted agenda, subject only to the following exceptions:
(1) Upon a determination by a majority vote of the Commission that an emergency situation exists, as defined in Section 54956.5 of the California Government Code.

(2) Upon a determination by a two-thirds vote of the Commission, or, if less than two-thirds of the members are present, a unanimous vote of those member present, that the need to take action arose subsequent to the agenda being posted.

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

“Action taken” as used herein shall mean a collective decision made by a majority of the Members of the Commission, a collective commitment or promise by a majority of the Members of the Commission to make a positive or a negative decision, or an actual vote by a majority of the Members of the Commission upon a motion, proposal, resolution, order, or ordinance. With regards to matters not on the agenda, the Members of the Commission may ask questions of persons who raise such matters during the Public Comment period or otherwise, but such questions should be limited to informational purposes, and the Commission should avoid discussions of the merits or giving directions regarding such subjects. With regards to matters raised by Members of the Commission under Staff and Commission Reports, such matters which are not on the agenda should normally be placed on future agenda. These matters may not be discussed and no action may be taken on such matters without being placed on a subsequent agenda. The above notwithstanding, “Action Taken” shall not refer to a request by the Commission that Staff return with information at some future date.
7.0 STANDING RULES

7.1 Quorum - At any meeting of the Commission, a quorum shall consist of three of the appointed members of the Commission. No action shall be taken in the absence of a quorum, except that those members present shall be entitled, by motion, to adjourn the meeting to another date.

7.2 Voting

A. One vote per member - The Chair, Vice Chair, Chair Pro Tem and each other Commissioner shall be entitled to one vote.

B. Proxy votes - No proxy votes are permitted.

C. Roll Call - A roll call shall be taken upon the passage of all resolutions. Such votes shall be recorded in the minutes of the proceedings of the Commission. Upon the request of any Commissioner, a Roll Call vote shall be taken and recorded on any vote. Whenever a Roll Call vote is in order, the Secretary, or his or her designee, shall call the names of the members in alphabetical order except that the name of the presiding officer shall be called last.

D. Disqualification from voting - In the event that any Commission member present shall have a conflicting personal interest of any kind in a matter then before the Commission, he or she shall announce that he or she has a conflict and disqualify himself or herself from voting upon the matter. The minutes shall reflect that no vote was cast by said member. For the purposes of these By-Laws, "conflicting personal interest" shall mean conflict of interest as applied in California Government Code Sections 1090, 1091, 1091.5, 87100, 87103, Title 2 Chapter 7 Section 18700 et seq. of the California Administrative code or in any other situation when the Commission member does not believe that he or she can make an impartial or unbiased decision.

E. Majority vote - A majority vote of the members present shall be necessary for the adoption of any proposed action, resolution or other voting matter except where otherwise set forth in these By-Laws or controlling law.

F. Tie Votes - Tie votes shall be recorded as a failure of action to pass. A tie vote on a motion defeats the motion.
G. **Absence from meeting** - Any member absent from a meeting shall not be allowed to vote on any matter discussed at that meeting until said member has listened to the tapes of the meeting, reviewed the minutes, if prepared, and all correspondence pertaining to the subject, and discussed the matter with staff.

H. **Silence constitutes affirmative vote** - Unless a member of the Commission has been permitted to and abstains from voting, pursuant to paragraphs (D) and (G) above, such member's silence shall be recorded as an affirmative vote.

7.3 **Signature**

A. **Official signature** - Any resolution of the Commission, duly recorded in the minutes, or where otherwise required by law, shall be signed by the officer presiding over the meeting at which the resolution was adopted.

In form, the official signature shall be substantially as follows:

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IRVINE TRANSPORTATION COMMISSION

  (signature)

  (name, title)
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B. **Minutes** shall also be signed by the Chair.

C. In all other matters, the Chair shall have the power to execute, verify or attest to documents on behalf of this Commission.

7.4 **Procedural Questions** - The Secretary shall rule on all procedural questions.

7.5 **Suspension of Rules** - The Commission may suspend any of these rules by a unanimous vote of the members present to the extent that such suspension does not conflict with controlling law.

7.6 **Parliamentary Procedure**

A. **Presiding officer may debate and vote** - The presiding officer may move, second and debate from the chair, subject only to such
limitations of debate as are imposed on all members of the Commission and shall not be deprived of any of the rights and privileges of a member of the Commission by reason of acting as the presiding officer.

B. Getting the floor; improper references to be avoided - Every member of the Commission desiring to speak shall address the chair, and upon recognition by the presiding officer, shall confine their remarks to the question under debate, avoiding all personalities and indecorous language.

C. Interruptions - A member of the Commission, once recognized, shall not be interrupted when speaking unless it be a call to order, or as herein otherwise provided. A member of the Commission called to order shall cease speaking until the question of order be determined, and if in order, shall be permitted to proceed.

D. Motion to reconsider - A motion to reconsider any action taken by the Commission may be made only on the day such action was taken. Such motion must be made by a Commissioner on the prevailing side of the vote, but may be seconded by any member of the Commission and may be made at any time and have precedence over all other motions. It shall be debatable. Nothing herein shall be construed to prevent any member of the Commission from making or remaking the same or other motion at a subsequent meeting of the Commission.

E. When remarks of Commission entered in minutes - A member of the Commission shall have the right, upon request to the presiding officer, to have an abstract of his or her statement on any subject under consideration by the Commission entered in the minutes. Such an abstract shall contain the statement of each other Commission member who addresses the subject at that time.

F. When synopsis of debate entered in minutes - The Secretary may be directed by the presiding officer, with consent of the Commission, to enter in the minutes a synopsis of the discussion on any subject under consideration by the Commission.

G. Disqualification and abstention - No member of the Commission shall be permitted to abstain from voting unless the member has disqualified him or herself pursuant to Section 7.2D of these
By-Laws. Unauthorized abstentions shall be recorded by the Secretary, or his or her designee, as an affirmative vote.

H. **Rules of Order** - Except as otherwise provided in this chapter, or otherwise specifically provided by law, the most recent edition of "Robert's Rules of Order, Newly Revised," shall govern the general conduct of the meetings of the Commission. The adoption of Robert's Rules of Order is for the purpose of establishing a procedural framework for the conduct of meetings only. Any failure to adhere thereto shall in no way affect the validity of any action taken by the Commission.

**8.0 MEETINGS**

8.1 **Regular Meetings** - Regular meetings of the Transportation Commission shall be held in the City Council Chambers, City Hall, 1 Civic Center Plaza, Irvine, California, at 5:30 PM, on the first and third Tuesday of each month. At such meetings, all matters properly on the Agenda shall be considered, as set forth in Section 4.0 of these By-Laws. Unless a majority of the members present votes otherwise, the meetings of the Commission shall adjourn at or before 11:00 PM. If the business of the Commission has not been completed by 10:00 PM, the Commission may vote to remain in session until all or a portion of its remaining business has been completed. All matters remaining after the Commission adjourns shall be continued to a subsequent regular meeting of the Commission.

8.2 **Special Meetings** - A special meeting may be called at any time by the Chairman of the Commission or by a majority of the Commission’s members, by delivering personally or by mail or email, written notice to the Secretary, each member of the Commission, and to each local newspaper of general circulation, radio or television station requesting notice in writing. The notice shall be received at least 24 hours before the time of the meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at these meetings by the Commission. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the Secretary a written waiver of notice. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any
action is taken at the special meeting. The notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

8.3 **Annual Meeting** - The Annual Meeting of the Transportation Commission shall be the first regular meeting in the month of January of each year. Such meeting shall commence with the election of a Chair and Vice Chair for the ensuing year and such other business as shall be scheduled by the Commission.

8.4 **Meetings on Holidays** - When a regular meeting falls on a holiday, the meeting shall be cancelled or held on a day to which the previous meeting was adjourned.

8.5 **Cancellation of Meeting** - Whenever reasons exist, (For example, lack of a quorum, no business for Commission consideration, or other good and valid reason), a meeting may be canceled by the Secretary upon consultation with the Chair. Such cancellation may be made at any time prior to the meeting but must be in writing at least twenty-four (24) hours prior to the scheduled meeting, and shall state the reason for said cancellation.

8.6 **Special Emergency Meetings** - Special Emergency Meetings may be called by the Chair or by a majority of the Transportation Commission where prompt action is necessary due to the disruption or threatened disruption of public facilities as that phrase is used in Government Code Section 54956.5.

8.7 **Adjourned Meetings** - The Transportation Commission may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. If a quorum is not present, less than a quorum may so adjourn. If all Members are absent from any regular or adjourned regular meeting, the Secretary of the Transportation Commission may declare the meeting adjourned to a stated time and place and shall cause a written notice of the cancelled meeting and call of the adjourned meeting to be delivered personally to each Commission member at least twenty-four (24) hours before the commencement of the meeting to which the cancelled meeting was adjourned. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held, within 24 hours after the time of adjournment. When a regular or adjourned
regular meeting is adjourned as provided herein, the resulting adjourned regular meeting shall be a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.

8.8 **Closed Sessions** - The Transportation Commission may hold closed sessions during a regular or special meeting when authorized by State law and when approved in advance by the City Attorney. If a closed session is included on the agenda, the description of the item need only identify the statutory basis for the closed session, and need not include the specific topic which is the subject of the closed session. During closed session, the Transportation Commission may exclude any person or persons which it is authorized by State law to exclude from a Closed Session. However, no minutes of the proceedings of the Transportation Commission during a closed session are required. The minutes of the Transportation Commission meeting shall reflect that the closed session occurred and the authority for the closed session. There shall be no closed session during any emergency meeting.

APPROVED by the City Council of the City of Irvine, by Minute Order at the City Council meeting of February 28, 2017.