

ENVIRONMENTAL COMMISSION OF MONTEREY PARK AGENDA

REGULAR MEETING

Monterey Park City Hall – Engineering Conference Room
320 W. Newmark Avenue, Monterey Park, CA 91754

Tuesday
June 13, 2017
6:00 PM

MISSION STATEMENT

The mission of the City of Monterey Park is to provide excellent services to enhance the quality of life for our entire community.

Documents related to an Agenda item are available to the public in the Public Works Department located at 320 West Newmark Avenue, Monterey Park, CA 91754, during normal business hours and the City's website at www.montereypark.ca.gov.

PUBLIC COMMENTS ON AGENDA ITEMS

You may speak up to five (5) minutes on Agenda item. You may combine up to two (2) minutes of time with another person's speaking. No person may speak more than a total of 10 minutes. The Commission Chair and Commissioners may change the amount of time allowed for speakers.

Per the Americans with Disabilities Act, if you need special assistance to participate in this meeting please call City Hall at (626) 307-1359 for reasonable accommodation at least 24 hours before a meeting. Council Chambers are wheelchair accessible.

CALL TO ORDER	Commission Chair
FLAG SALUTE	Commission Chair
ROLL CALL	Commissioners: Karl Wong, Shirley Hwong, and Richard Mai
	Youth Advisors: Salvina Lim and Kailey Ogawa-Monroe

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

PUBLIC COMMUNICATIONS (Related to Items NOT on the Agenda). While all comments are welcome, the Brown Act does not allow the City Council to take action on any item not on the agenda. The Council may briefly respond to comments after Public Communications is closed. Persons may, in addition to any other matter within the City Council's subject-matter jurisdiction, comment on Agenda Items at this time. If you provide public comment on a specific Agenda item at this time, however, you cannot later provide comments at the time the Agenda Item is considered.

ORAL AND WRITTEN COMMUNICATIONS

[1.] **PRESENTATIONS** – None.

[2.] **OLD BUSINESS**

2-A. **DEMONSTRATION GARDEN**

It is recommended that the Environmental Commission:

- (1) Continue to discuss the promotion of the Demonstration Garden project; and
- (2) Take such additional, related, action that may be desirable.

2-B. MATERIALS RECOVERY FACILITY (MRF) TOUR

It is recommended that the Environmental Commission:

- (1) Continue to discuss the organization of Athens' Materials Recovery Facility (MRF) tour; and
- (2) Take such additional, related, action that may be desirable.

2-C. ENVIRONMENTAL COMMISSION PRESENTATION AT THE LANGLEY CENTER

It is recommended that the Environmental Commission:

- (1) Continue to discuss the May 22, 2017 presentation at the Langley Center; and
- (2) Take such additional, related, action that may be desirable.

[3.] NEW BUSINESS

3-A. APPROVAL OF MINUTES

It is recommended that the Environmental Commission:

- (1) Approve the minutes from the regular meeting of May 9, 2017; and
- (2) Take such additional, related, action that may be desirable.

3-B. SELECTION OF ENVIRONMENTAL COMMISSION CHAIR AND CO-CHAIR AND APPOINTMENT OF NEW YOUTH ADVISOR

It is recommended that the Environmental Commission:

- (1) Select a Commission Chair and a Co-Chair and appoint a new Youth Advisor; and
- (2) Taking such additional, related, action that may be desirable.

3-C. DISTRIBUTION OF 2017 COMMISSIONS HANDBOOK AND ROSENBERG'S RULES OF ORDER

It is recommended that the Environmental Commission:

- (1) Receive and file the 2017 Commissions Handbook and Rosenberg's Rules of Order; and
- (2) Taking such additional, related, action that may be desirable.

[4.] COMMISSION COMMUNICATIONS

ADJOURN



Environmental Commission Staff Report

DATE: June 13, 2017

AGENDA ITEM NO: 3-A

TO: Environmental Commission
FROM: Bonnie Tam, Principal Management Analyst
SUBJECT: Approval of Minutes

RECOMMENDATION:

It is recommended that the Environmental Commission:

1. Approve the minutes from the regular meeting of May 9, 2017; and
2. Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

None.

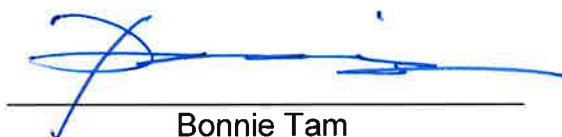
BACKGROUND:

None.

FISCAL IMPACT:

None.

Respectfully submitted by:



Bonnie Tam
Principal Management Analyst

ATTACHMENT:

1. Meeting Minutes

ATTACHMENT 1
Meeting Minutes

**MONTEREY PARK ENVIRONMENTAL COMMISSION
REGULAR MEETING MINUTES
May 9, 2017**

The Environmental Commission of the City of Monterey Park held a Regular Meeting of the Commission in the Engineering Conference Room, located at 320 West Newmark Avenue in the City of Monterey Park, Tuesday, May 9, 2017 at 6:00 p.m.

CALL TO ORDER:

Chair Wong called the meeting to order at 6:13 p.m.

FLAG SALUTE:

Chair Wong led the flag salute.

ROLL CALL:

Chair Wong called the roll:

Commissioners Present: Shirley Hwong, Karl Wong, and Richard Mai

Student Commissioner Absent: Salvina Lim and Kailey Ogawa-Monroe

ALSO PRESENT: Interim Public Works Director Tito Haes, Principal Management Analyst Bonnie Tam, and Ware Disposal Business Development Administrator Sissy Ye

AGENDA ADDITIONS, DELETIONS, CHANGES AND ADOPTIONS

None.

ORAL AND WRITTEN COMMUNICATIONS

1. PRESENTATION

None.

2. OLD BUSINESS

2-A. DEMONSTRATION GARDEN

Principal Management Analyst Bonnie Tam briefed the Commission on the status of the City's Demonstration Garden project that will demonstrate landscaping that is attractive, environmentally-friendly, and conserves water. A ribbon-cutting ceremony is tentatively scheduled for June 2, 2017 and the Environmental Commissioners will be invited to the event. An email invitation will be sent out prior to the ceremony once the time of the event is confirmed.

2-B. MATERIALS RECOVERY FACILITY (MRF) TOUR

Principal Management Analyst Bonnie Tam briefed the Commission on Athens Services' response to the coordination of a Materials Recovery Facility (MRF) tour originally scheduled for Saturdays either on May 6 or May 20. The Commissioners proposed new dates on any weekday during the third or fourth week of June to visit

the MRF. Principal Management Analyst Bonnie Tam to arrange the tour with Athens Services for one of these dates.

3. NEW BUSINESS

3-A. APPROVAL OF MINUTES

Approve the minutes from the regular meeting of April 11, 2017.

Action Taken: The Environmental Commission approved the minutes from the regular meeting of April 11, 2017.

Motion: Moved by Chair Wong and seconded by Commissioner Mai, motion carried by Co-Chair Hwong.

3-B. DEBRIEF FOR EARTH DAY 2017

Chair Wong briefed the Commission on the Earth Day Festival and Bike Ride and stated that over 100 people participated in the morning bike ride and hundreds more come through the festival to visit the booths and learn more about sustainable and healthy living. Co-Chair Hwong and commissioners expressed their appreciation to all student volunteers who helped out at the festival, and special thanks go to Youth Advisor Kailey Ogawa-Monroe's mother for her assistance in the on-site coordination at the festival.

The Commissioners further discussed things to do in the preparation of next year's Earth Day events. Co-Chair Hwong suggested that the Commission purchases T-shirts made with recycled materials as giveaways next year. Principal Management Bonnie Tam will research and obtain quotes from vendors to be discussed at future commission regular meeting. Chair Wong suggested that the Commission and staff liaison coordinates with the City's Recreation Department when inviting elected officials to speak at the Cherry Blossom Festival and Earth Day Opening Ceremony next year. It was also suggested that the Bike Ride booth and starting point to be moved from the Bruggemeyer Library to Barnes Park in order to streamline the bike ride and festival coordination.

3-C. ENVIRONMENTAL COMMISSION SCHEDULED PRESENTATION AT THE LANGLEY CENTER

Co-Chair Hwong briefed the Commission details on an invitation by the Langley Center's Gardening Club to make a presentation on the Environmental Commission at their April regular meeting. Co-Chair Hwong stated that since the Commission did not have a regular meeting until May to discuss this item, the Commission was instead invited to speak at the Gardening Club's May regular meeting on May 22, 2017.

Action Taken: The Environmental Commission approved for the Commissioners representing the Commission as a body at meetings and for the Commissioners to speak at the Gardening Club at their May regular meeting on May 22, 2017.

Motion: Moved by Co-Chair Hwong and seconded by Chair Wong, motion carried by Commissioner Mai.

3-D. ATHENS SERVICES COMPOSTING FACILITY TOUR

Chair Wong briefed the Commission on a tour he attended to visit the Athens Services' composting facility in Victorville on May 3, 2017. Commissioners mentioned that they would like to visit Ware Disposal's composting facility in the near future. Ware Disposal Business Development Administrator Sissy Ye stated that she can help coordinate. This item will be discussed at future commission regular meeting.

4. COMMISSION COMMUNICATIONS

Co-Chair Hwong announced that the Monterey Park Library Foundation will host a fundraising event on June 1, 2017 at 6 p.m. at Luminarias restaurant, 3500 Ramona Blvd., Monterey Park.

Principal Management Analyst Bonnie Tam announced that the City's Public Works Department is celebrating the National Public Works Week at the City Corporate Yard on May 17, 2017 from 11 a.m. to 1:30 p.m. The public is cordially invited to attend this Open House event.

Principal Management Analyst Bonnie Tam announced that Director Leticia Vasquez Wilson from the Central Basin Municipal Water District invites the public to a tour of Diamond Valley Lake on June 2, 2017 from 7:30 a.m. to 4:45 p.m.

ADJOURNMENT

There being no further business for consideration, the meeting was adjourned at 8:09 p.m.

Bonnie Tam
Staff Liaison to the Environmental Commission
City of Monterey Park

Approved on June 13, 2017 at the Environmental Commission regular meeting



Environmental Commission Staff Report

DATE: June 13, 2017

AGENDA ITEM NO: 3-C

TO: Environmental Commission
FROM: Bonnie Tam, Principal Management Analyst
SUBJECT: Distribution of 2017 Commissions Handbook and Rosenberg's Rules of Order

RECOMMENDATION:

It is recommended that the Environmental Commission:

1. Receive and file the 2017 Commissions Handbook and Rosenberg's Rules of Order; and
2. Take such additional, related, action that may be desirable.

EXECUTIVE SUMMARY:

On May 3, 2017, the City Clerk's Office instructed Commission Staff Liaisons to distribute an updated Commissions Handbook and Rosenberg's Rules of Order at the Commission regular meeting. Staff recommends the Environmental Commission to receive and file the 2017 Commissions Handbook and Rosenberg's Rules of Order.

BACKGROUND:

None.

FISCAL IMPACT:

None.

Respectfully submitted by:

A handwritten signature in blue ink, appearing to be "Bonnie Tam", is written over a horizontal line.

Bonnie Tam
Principal Management Analyst

ATTACHMENT:

1. 2017 Commissions Handbook
2. Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

ATTACHMENT 1
2017 Commissions Handbook

City of Monterey Park Commissions Committees and Boards Handbook



"Pride in the Past . . . Faith in the Future"

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Published by the City Clerk's Office, Adopted April 14, 1980

Revised: September 11, 1995; January 27, 1997; January 20, 2000; September 1, 2003; June 20, 2005; June 1, 2014'
and March 29, 2017

INTRODUCTION

The purpose of this handbook is to provide a general orientation and guide on the responsibilities and roles that the Council has envisioned in establishing Monterey Park's boards, committees and commissions.

To be selected as an active member of a commission is a high honor, providing a unique opportunity for genuine public service. The specific duties of Monterey Park's boards, committees and commissions vary widely with the purpose for which they are formed; however, there are certain responsibilities that are common to all members.

All commission, board, and committee members and prospective members should familiarize themselves with this handbook. By so doing, they will understand their role more fully and improve the quality of service they provide to the community.

In addition to reviewing this manual, prospective members are encouraged to attend at least one regular meeting and meet with the chairperson or staff liaison of the commission, board or committee for which they wish to apply.

THE HISTORY OF MONTEREY PARK

The original inhabitants of Monterey Park were Shoshone Indians—later renamed Gabrielino by the Spaniards. When Father Angel Somero and Pedro Cambon led the first party of soldiers into the San Gabriel Valley in 1771, there were more than 4,000 Gabrielino residents.

By the early 1800's the area now called Monterey Park was part of the Mission San Gabriel de Arcangel and, later, the Rancho San Antonio. The area first received a separate identity when Alessandro Repetto purchased 5,000 acres of the rancho and built his home, not far from where the Edison substation is located on Garfield Avenue.

Some years later, Richard Garvey, a mail rider for the U.S. Army, whose route took him through Monterey Pass, a trail which is now Garvey Avenue, settled down in the King's Hills, Garvey began developing the land by bringing in spring water from near the Hondo River and by constructing a 54-foot high dam to form Garvey Lake which was located where Garvey Ranch is now.

To pay for his development and past debts, Garvey began selling off portions of his property. In 1906, the first subdivision in the area, Ramona Acres, was developed north of Garvey and east of Garfield Avenues.

In 1916, the new residents of the area initiated action to become a city when the cities of Pasadena, South Pasadena and Alhambra proposed to put a large sewage treatment facility in the area.

The community voted itself into cityhood on May 29, 1916, by a vote of 455 to 33. The City's new board of directors immediately outlawed sewage plants within city boundaries and named the new city Monterey Park. The name was taken from an old government map showing the oak-covered hills of the area as Monterey Hills. In 1920, a large area on the south edge of the city broke away and the separate city of Montebello was established.

Shortly after the incorporation, H. M. Gordon was employed as City Marshal at a salary of \$100 a month and was instructed to apprehend chicken thieves operating in the area. The three northern cities, Pasadena, South Pasadena and Alhambra continued to press for a sewage farm in Monterey Park. It took four years of stormy sessions in the courts and State legislature before Monterey Park became victorious.

By 1920, the white and Spanish-surname settlers were joined by Asian residents who began farming potatoes and flowers and developing nurseries in the Monterey Highlands area. They improved the Monterey Pass trail with a road to aid in shipping their produce to Los Angeles. The nameless pass, which had been a popular location for western movies, was called Coyote Pass by Pioneer Masami Abe.

Throughout the 1920's, as the population increased, the chance that a large pool of oil sat beneath Monterey Park's hills caused the drilling of several ultimately dry wells.

Real estate also became a thriving industry during the 1920's, with investors attracted to the numerous subdivisions under development and the increasing commercial opportunities. One such development was the Midwick View Estates, a proposed garden community that was designed to rival Bel-Air and Beverly Hills. The seventy-foot waterfall built for that tract still stands at Atlantic Boulevard and El Portal.

However, the Depression brought an abrupt end to the real estate boom and the Midwick proposal. The City had little new development for nearly two decades.

The end of World War II resulted in a revived growth trend and explosive population gains during the 1940's and 1950's. Until this time, the population was concentrated in the northern and southern portions of the city, with the Garvey and Monterey hills forming a natural barrier. With the renewed growth, many new subdivisions were developed, utilizing even the previously underdeveloped central area to allow for maximum growth potential. A series of annexations of surrounding acreage also occurred. At present, Monterey Park is a community of 60,051 residents with a land area of 7.73 square miles. Even as the San Gabriel Valley became more urbanized, Monterey Park retained much of the low density, small town feeling that prompted residents to form a city over ninety five years ago.

In the last decade, Monterey Park has emerged as one of the most diverse communities in the United States and has received much attention as the first city in the country with an Asian-American majority. But Monterey Park is home to many different racial and ethnic groups making it a truly multi-cultural city. According to the 2010 Census, Monterey Park diverse population is composed of 66.9% Asian Americans, 26.9% Hispanics, 5.0% Caucasians, .4% American Indians, .4% African-Americans, and 2.9% multiracial

Monterey Park is an excellent example of the idea of the "melting pot" in this nation. Despite cultural differences, residents of Monterey Park share one thing in common: their love of freedom. Their appreciation and expression of this freedom has led to many awards for the City. One of them being the All American City presented in 1984 by the National Civic League. This award was presented in recognition of achievement through citizen action. In 1984, the City of Monterey Park was awarded a great honor by the Los Angeles Olympic committee. The Committee awarded East Los Angeles College the right to host the Los Angeles Olympic Field hockey games.

Striving to blend residence and commerce, Monterey Park maintains 78% of its space for residential/school facilities, 11% for industrial, 9% for commercial and retail use, and 2% for open space. The City has thirteen parks and recreational facilities, eight public elementary schools, two private elementary schools, one middle school, one community college and one public library

MONTEREY PARK GOVERNMENT STRUCTURES

California cities operate under the express authority of the state legislature and exercise two basic kinds of powers—regulatory and corporate. The first is the power to regulate the conduct of citizens; the second is the power to perform a particular service or activity. Authorization and limitations on these powers are derived from several sources: the California State Constitution, the United States Constitution, California state statutes and codes, rulings of state administrative agencies, and decisions by our state and federal courts.

Approximately 80% of the cities in California are general law cities, governed primarily by the State Government Code. The remaining 20% are charter cities, which have adopted and are governed by local by-laws. Monterey Park is a general law city, and the authority for the bulk of its powers can be found under State Government Code Section 34000 et. seq.

The City operates under the Council-Manager form of government. The City's five Council Members are elected at large for four-year, over-lapping terms of office. The Council reorganizes every nine and one-half month and designates one of its members to serve as Mayor. The Mayor presides over all the Council meetings and is the ceremonial head of the City for official functions.

The City Council is responsible to the electorate for keeping pace with changing community needs, for establishing the quality of municipal services through the open conduct of public affairs, and for encouraging constructive citizen participation. The Council determines service levels and revenue obligations through the adoption of an annual budget; authorizes City contracts and expenditures; establishes municipal service goals and operating policies; and adopts such regulatory measures as may be necessary for the mutual protection of the community.

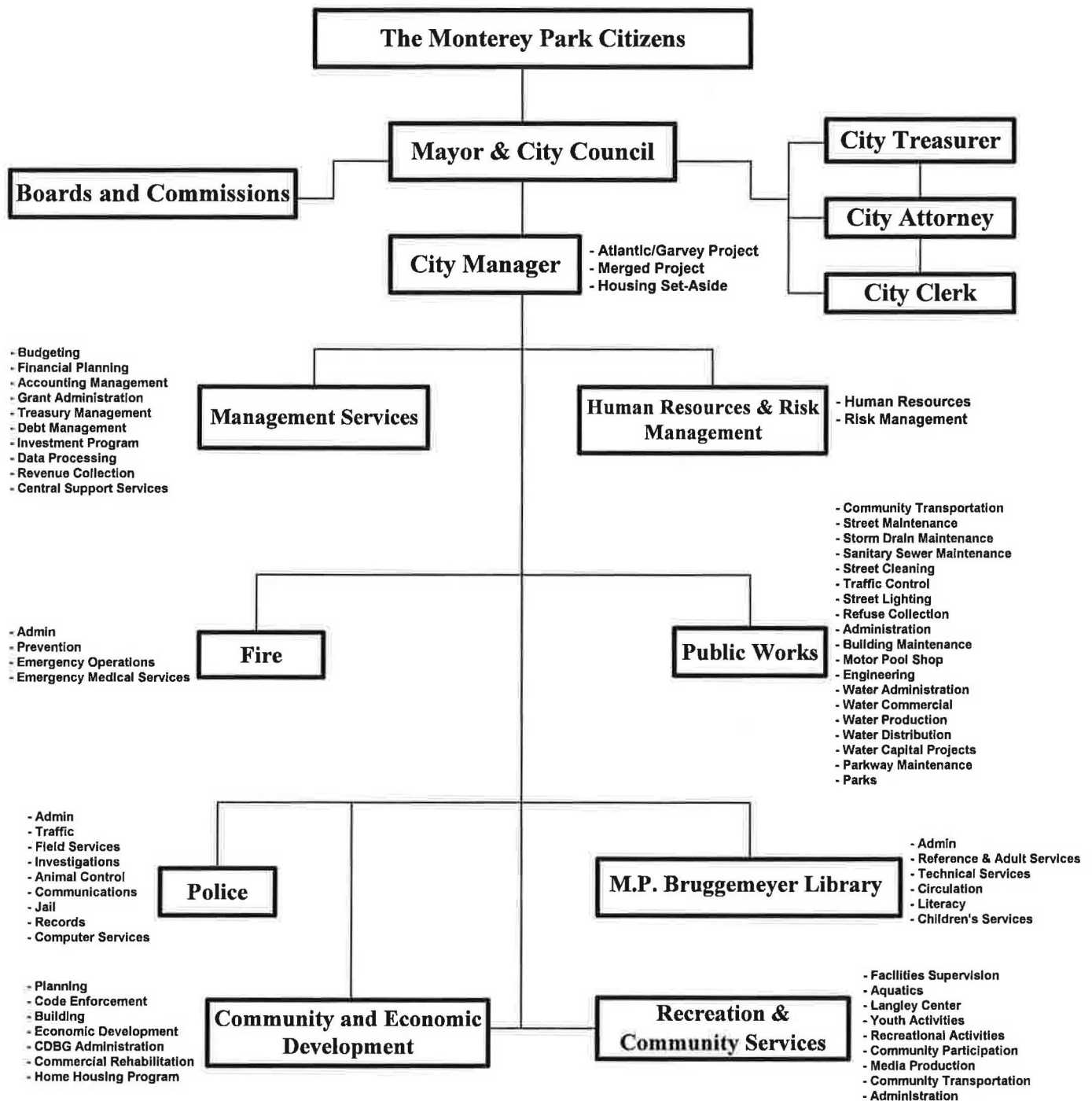
Council Members represent the City on various intergovernmental organizations to achieve governmental cooperation, legislation and programs that are consistent with the needs of Monterey Park citizens.

In addition, the Council appoints the following: A City Manager to carry out its policies and enforce the laws of the City, a City Attorney to act as legal advisor to the City Council and City Manager; and all boards, committees and commissions members.

The City Clerk and City Treasurer are also elected officials of the City. Both are elected to serve four-year terms of office. The City Clerk is responsible to the electorate for keeping a complete and accurate record of City Council proceedings, maintaining official city records, and conducting municipal elections in accordance with the stipulations of state and federal laws.

The City Treasurer is responsible to the electorate for the custody of City monies and their disbursement upon order of the City Council, investment of temporarily surplus funds, and the maintenance of municipal bonds. The organization chart, on the following page, reflects the relationships of each of the operating departments.

City of Monterey Park Organization Chart



The City is a council-manager government, whose five council members are elected at a for four-year, overlapping terms of office.

COMMISSION STRUCTURE

To assist in determining the overall goals of the community, eleven (11) groups of qualified City volunteers have been established. These groups advise and assist the City Council, in their respective areas of concern, by acting as an additional line of communication between the general public and the Council. The city also has a Sister Cities Commission comprised from the five recognized Sister City Associations.

It is each commission's right to make recommendations to the Council--commissioners are not appointed to determine or establish either City policy or administrative direction, except for the Planning Commission and Library Board of Trustees. The benefits to be derived from board, committee and commission deliberation lie in:

1. Focusing attention to specific problems;
2. Encouraging broad citizen participation in formulating alternative goals;
3. Weighing community values in a functional area of municipal responsibility;
4. Utilizing a point of view with an orientation different from that of the professional staff;
5. Making recommendations based on thoughtful and thorough consideration of the alternatives;
6. Providing an in-depth analysis of matters that will be decided by the City Council.

Commissions are strongly encouraged to review the Monterey Park Municipal Code for a detailed analysis of their individual duties and limitations (Copies of the Municipal Code are available at the City Clerk's office). Briefly, the various boards, committees and commissions are described below.

Business Improvement District Advisory Committee (Community and Economic Development)

The Business Improvement District Advisory Committee consists of five members. The purpose of this committee is to make recommendations on the operations and extent of marketing the downtown business area and the methods and ways in which the revenue is derived from the charges, assessments and contributions imposed or authorized by Municipal Code Chapter 5.82, and California Street & Highway Code Section 36500 *et. seq.* Members on this committee must own or operate a business in the district.

Commission On Aging (Recreation & Community Services)

The Commission on Aging consists of ten members. The commission (1) provides liaison and coordination with the senior citizen community, the City Council, the Recreation and Parks Commission, the Community Participation Commission, community service organizations, and other governmental and private agencies in relation to aging; (2) promote and encourage community interest and responsibility to correct and prevent problems of aging; (3) obtain resources for available grants and funds for senior citizen projects; (4) improve the physical and social environment with respect to senior citizens; (5) obtain and distribute resource information for various services intended to benefit senior citizens such as legal aid, medical programs, housing and transportation; (6) encourage established agencies to take responsibility for meeting needs as they are discovered and to take appropriate action; (7) develop and assist in planning appropriate services or projects if existing agencies are unable to meet the need; (8) participate in the establishment of the policy and/or program development of such service or project during and after its formulation; and (9) act in an advisory capacity to the city council in matters pertaining to senior citizens issues. Members of this commission must be a Monterey Park resident.

Community Participation Commission (Recreation & Community Services)

The Community Participation Commission has ten members that coordinate activities and programs with seven non-voting youth members. The youth members are selected by the commission as follows: (1) three members from the Alhambra Unified School District; (2) two members from the Montebello Unified School District; (3) two members at large from the community to accommodate students attending private schools; (4) members must be currently attending high school or attended within the last six months. This commission would (1) seek out and publicize artistic, cultural, and historic exhibits, performances and opportunities that would enhance the community; (2) increase public awareness and appreciation of Monterey Park's history and heritage; (3) preserve memorabilia and records of the history of Monterey Park and maintain a written history of the city; (4) conduct and recommend programs which will increase good will among residents of the community and open new opportunities into all phases of community life for all residents; (5) make residents aware of the services, programs and organizations available in the community; (6) provide information and opportunities for newcomers to become involved in the community; (7) foster mutual regard and understanding among all racial, religious and ethnic groups in the community; (8) participate in community affairs; (9) promote and encourage community interest and responsibility to correct and prevent conditions of neighborhood blight and deterioration by developing programs and resources in order to provide for a more suitable living environment for all residents; (10) involve youths in community activities; (11) act in an advisory capacity to the city council on all matters pertaining to the city's community participation activities; (12) review existing youth programs and make recommendations to improve these programs; (13) inform the City Council of the needs, concerns, achievements, goals and problems of the youth in the community; (14) promote increased interest and participation among the youth in community affairs; (15) foster increased

understanding between youth groups within the community by providing conflict resolutions; and (16) provide an annual report to the City Council regarding the status of the community's youth. Members of this commission must be a Monterey Park resident.

Design Review Board (Community and Economic Development)

The Design Review Board consists of five members. Members on this board may either be a Monterey Park resident or a person maintaining a business license in the city. It is recommended that members have a background as an architect, planner, landscape architect, civil engineer, building contractor, or a practicing licensed electrician. The purpose of the Board is to ensure high quality design standards in building and development projects in order to conserve and maintain the aesthetic value of the community, to encourage the most appropriate use of land, and to maintain a proper relationship between the taxable value of real property and the cost of providing municipal services.

Economic Development Advisory Commission (Community and Economic Development)

This Commission is composed of five members. It shall be the responsibility of the commission to: 1) Monitor implementation of the Economic Development Strategy Plan adopted by the city council; 2) Recommend updates of amendments to the Economic Development Strategy Plan as deemed necessary; 3) Provide the City Council with annual reports on progress towards meeting economic and community development goals as identified in the Economic Development Strategic Plan; 4) Act in an advisory capacity to the City Council on the needs of local businesses, and the availability of economic development opportunities and resources. Each member must be either a resident of the city or have business experience with a background in finance, economics or development.

Environmental Commission (Public Works)

This Commission is composed of five members and two non-voting youth members appointed by the commission. Members may be a resident or individual operating or working in the City of Monterey Park, or a professional or scholar in the environmental field. The Commission (1) develops and implement policies and procedures relevant to the environment and sustainability of the community; (2) promote programs to increase the education and awareness of the environment, in addition to providing direct benefits to individual residents and businesses through dollar savings; (3) investigate potential funding in order to implement programs directly in the community and to operate the activities of the commission; (4) monitoring legislative activities that would affect the City and provide recommendations to the city council; (5) undertake such activities as directed by the city council for other issues deemed necessary as the environmental integrity of the city that affects numerous areas of municipal government, planning, transportation, air quality, congestion management, and community improvement; and (6) serve in advisory capacity to the city council on issues deemed relevant to the environment and sustainability of the city

Library Board of Trustees (Library)

The five-member Library Board, governed by the California Education Code, is an administrative body responsible for the effective delivery of library services to the community. Members on this board must be a Monterey Park resident.

Personnel Board (Human Resources)

The Personnel Board is comprised of five members. The Personnel Board reviews recruitment and selection procedures to ensure compliance with the City's personnel system; hears appeal of disciplinary actions; and, makes recommendations regarding the Personnel System Rules and Regulations. See Administrative Procedures, Appointments for membership requirements.

Planning Commission (Community and Economic Development)

Planning Commission is a quasi-judicial body consisting of five members who advise the Council on policies and legislation relating to the regulation of growth, development and environmental conditions affecting the City. The Commission investigates and makes recommendations on zone changes, specific plan revisions, subdivision maps, and decides on zone variances and conditional use permits, subject to appeal to the City Council. Members on this commission must be a Monterey Park resident.

Recreation and Parks Commission (Recreation & Community Services)

This commission consists of five-members plus ex-officio member(s) as approved by the city manager or it's designees. Regular members cannot hold any paid office or employment in the city government. The commission (1) acts in an advisory capacity to the Council and administrative personnel in all matters pertaining to parks, parkways and public recreation and to cooperate with other governmental agencies and civic groups in the acquisition, planning and programming thereof; (2) formulate and propose policies on recreation services for approval by the city council; (3) make periodic inventories of recreation services that may be needed and interpret the needs of the public to the city council and administration; (4) aid in coordinating the recreation services with the programs of other governmental agencies and voluntary organizations; (5) inform the public of the policies and functions of the recreation and parks program; and (6) inform, advises and cooperate with boards of education and boards of school trustees of school districts comprising a part of the city of being immediately adjacent to the city to the extent that such information, advice and cooperation shall be proper and desirable in preparing, revising or carrying out the park or recreation program of the city. Members on this commission must be a Monterey Park resident.

Sister Cities Commission (City Council/Recreation & Community Services)

The Sister Cities Commission consists of three members from each of our sister city associations: Nachikatsuura, Japan; Morelia, Mexico; Yung-Ho, Taiwan, Quanzhou, China and Yeongdeungpo-Gu, Seoul, Korea. Their purpose includes 1) fostering friendship, goodwill and communication among the Sister Cities of Monterey Park; 2)

participating in the exchange of cultures through cultural events and programs; and 3) serving as cultural ambassadors to sister city visitors. Members on the commission are selected by their respective associations. Members shall abide by the by-laws adopted by the commission.

Traffic Commission (Public Works)

The Traffic Commission consists of five members, that reviews traffic issues and recommend any needed changes. Issues range from traffic safety matters to parking restrictions that may be the result of a citizen's request or a staff recommendation. The Commission also makes recommendations to the City Council for installation of stop signs and amendments to the City Code for traffic related items that may ease traffic congestion and help facilitate transportation throughout the City. Members on this commission must be a Monterey Park resident.

ADMINISTRATIVE PROCEDURES

Appointments

Commissioners, Committee and Board Members are appointed by individual City Council members, with the exception of the Library Board of Trustees, the Personnel Board, and the Sister Cities Commission. Appointments are announced at a city council meeting by the appointing council member.

The number of seats on the Commission, Board or Committee determines the number of appointees per Council Member. They are as follows:

- Commission on Aging and Community Participation Commission: Each council member can nominate two (2) members.
- Business Improvement District Advisory Committee, Design Review Board, Economic Development Advisory Commission, Environmental Commission, Planning Commission, Recreation & Parks Commission, and Traffic Commission: Each Council Member can nominate one (1) member.

Members on the Library Board of Trustees are appointed by the Mayor with the approval of the City Council. They are limited to two, 3-year terms in office, but serve until their respective successors are appointed. A one-year waiting period is required following the expiration of the second consecutive term.

Members on the Personnel Board are appointed by the City Council in the following manner: One member from a list of three persons nominated by the personnel of the Monterey Park Fire and Police Departments; one member from a list of three persons nominated by the remaining employees of the city; two members from the community at large; and one member from a list of three persons nominated by a majority of the four previously appointed members. A majority vote of the city council shall be required to appoint a member of the personnel board. The terms of office shall be for four years.

Members on the Sister Cities Commission are appointed by their respective Sister City Association and can serve an unlimited term.

After selection, each commissioner is sworn in by the City Clerk and required to sign a loyalty oath at the first available commission, board or committee meeting.

Every commission, board or committees term begins May 1 and ends April 30 of the following year. No person may serve more than eight consecutive terms on the same commission, board or committee. A person cannot serve on more than one Commission, Board or Committee at the same time.

Residency will be verified annually by the City Clerk's office. Should any members ceased to be a city resident that seat is deemed vacant and the term of such member terminated.

Attendance

Members are expected to attend all scheduled meetings. The City Council wants the benefit of the full commission's judgment. Whenever possible, commissioners should notify their staff representative, the chairperson, or a person designated by the commission within twenty-four hours of a scheduled meeting if they will be unable to attend.

Unless otherwise provided, if a board, committee or commission member fails to attend three (3) consecutive meetings, unless excused for cause by the committee chairperson, that member's office is deemed vacant and the member's term ended. The committee secretary must immediately notify the appointing council member and city clerk of such termination.

Any member of any City Commission, Board or Committee appointed by the City Council, and terminated from said Commission, Board or Committee for absences, whether excused or unexcused, cannot be nominated for appointment to any City Commission, Board or Committee for a period of twelve months after said termination became effective.

Residency

Residency in Monterey Park is required for all members of commissions, boards and committees except for the following: Members on the Business Improvement District Advisory Commission, Design Review Board, Economic Development Advisory Commission, Environmental Commission and the Personnel Board. For specific appointment requires refer to the Commission Structure section of this handbook.

Removal or Resignations

Members of city commissions, boards or committees serve at the pleasure of the city council and may be removed at the discretion of the city council member who appointed the Commissioner, except for the members of the Library Board of Trustees, the Personnel Board, and the Sister Cities Commission. Memberships are automatically terminated for absences as described in the prior section and is applicable for all commissions, boards and committees.

In the event an individual is unable to perform as a commissioner for health, business or personal reasons, the member shall submit a formal letter of resignation to the appointing Council Member for appropriate action, with a copy to the City Clerk and staff liaison.

Meetings

Regular Meetings. The date and time of a regular meeting is established by each commission, board or committee by minute action and may be amended from time to time. Regular meeting agendas shall be posted 72 hours in advance of the meeting to comply with the Brown Act.

Adjourned Meetings. A commission, board or committee may adjourn any special or regular meeting to a time and place specified in the order of adjournment. An adjourned regular meeting is considered a regular meeting for purposes of transacting business. A meeting cannot be adjourned past the next regular meeting date. A notice (notice of adjournment) must be given in the same manner as a notice of special meeting. Notice of adjournment must be posted on or near the door of the meeting room within 24 hours of the adjournment.

Special Meetings. A special meeting may be called by the Chairperson or a majority of the members of a board or commission by delivering personally or by mail written notice to each member and to each newspaper, which has requested such notice. The agenda must be delivered at least twenty-four hours before the time of such meeting, as specified in the notice. The agenda shall specify the time and place of the special meeting and the business to be transacted. No business other than as set forth in the notice shall be considered at such a meeting.

Meeting Place. Generally, meetings must be held in a public place within the City limits. The location should be consistent. However, meetings may be adjourned to other locations for limited purposes pursuant to the Brown Act.

Committees. All groups may designate one (1) of its members, or a subcommittee composed of not more than two (2) members to study, review, consider, or make recommendations concerning any matter within the committee's purview. However, members should discuss with their staff liaison before any action being taken.

Quorums

A quorum is essential for the conduct of business. A majority of the authorized members of a body constitutes a quorum. If a quorum is not present, the meeting may be adjourned by the members who are there. If no members are present, the meeting may be adjourned by the assigned staff member. The only business that can be transacted in the absence of a quorum is to take measure to obtain a quorum, to fix the time to which to adjourn, or to take a recess.

Conduct of Meetings

Each May, a committee will annually organize and elect a chairperson and vice-chairperson from its membership for a one-year term. In the chairperson's or vice-

chairperson's absence or disability, the committee may designate a chairperson or vice-chairperson pro tempore. Subject to the review and approval of the City Council, the commission may establish such rules and regulations as it deems necessary for its government and for the stable performance of its duties. Rules and regulations beyond those found in the establishing resolutions or codes shall be kept on file in the office of the City Clerk where they shall be made available for public inspection.

The methods used in conducting a meeting are largely the responsibility of the chairperson. It is the chairperson's responsibility to see that 1) consideration of items on the agenda move along without delay in a businesslike manner, but with reasonable time allotted to each; 2) that petitioners and proponents are heard but not permitted to prolong the meeting; 3) that any policies or rules prescribed by the City Council are observed; and 4) that all actions are according to proper procedure.

Agenda Procedure

One or more administrative staff members may be assigned to each board or commission. Items should be submitted to the staff at least five working days before the meeting in order to ensure their placement on the agenda. Some items may require more than five days notice to satisfy specific noticing requirements. The agenda must specify the time and location of the meeting and a "brief general description" of each item of business to be transacted or discussed. Agenda items generally need not exceed 20 words in length. The agenda must designate and provide the address of a location where members of the public may inspect the agenda and any associated writings, such as staff reports. The agenda must also contain information on how a person may request a disability accommodation to participate in a meeting.

Members of the public have a right to address the commission, board or committee at a regular or special meeting. Every agenda must provide an opportunity for members of the public to address the commission, board or committee on any item of interest to the public that is within the commission, board or committee subject matter jurisdiction.

No discussion or action may occur with respect to any item not appearing on the posted agenda. Limited questions, requests, and responses on matters not appearing on the posted agenda are allowed such as questions for clarification, references to staff or other resources for factual information, requests to agendaize a matter of business for a future meeting or brief announcements can be made.

Minutes

Minutes are to be taken of each meeting in accordance with the following requirements and regulations:

1. Minutes shall contain a record of all proceedings, motions and actions. Findings, amendments and conditions shall also be recorded into the minutes.
2. Unless specifically provided by Council policy, minutes shall not be a verbatim recording.
3. All motions, whether passed or denied, shall be recorded with the name of proposer, second and vote.
4. Minutes of hearings shall list all persons who speak for or against.
5. Minutes are merely a record of transactions. Personal opinion is not appropriate.
6. Minutes must be approved by a majority vote of the members and shall be considered an official record.
7. Amendments and corrections of the minutes submitted to the secretary may be made only in public meetings with the approval of the body and not by the private request of individual members.

In some cases, a Minutes Secretary may be assigned by the staffing department. Otherwise, a Commissioner should be selected to take minutes. All approved minutes shall be forwarded to the City Clerk's office for record keeping purposes.

Communications to the City Council

Commissions as a body may feel free to request the services of the assigned staff in composing, typing and processing correspondence or any materials relating to their oversight to go before the City Council. It should be specified whether the item is *for information only* or *requires action*. The deadline for placing an item on the City Council agenda is twelve days before the City Council meeting. Work with the staff liaison on the process to present items for City Council consideration.

It is considered excellent practice for at least one member of a committee, board or commission to attend an occasional meeting of the City Council regardless of whether the commission has an item on the agenda. The Council encourages commissions to appoint a member to serve as council liaison to keep the other commissioners informed on city activities.

Disclosure of Economic Interests

Pursuant to the City's Conflict of Interest Code, members of the following committees and commissions are required to file an annual Statement of Economic Interests: Business Improvement District Advisory Committee, Design Review Board, Library Board of Trustees, and Planning Commission. The filed statements become public record and are available for inspection, on demand, at the City Clerk's Office.

Under State law, the above designated board members or commissioners must file within thirty days of assuming office with the City Clerk's Office. All subsequent statements must be filed on or before April 1st of each year. Designated Commissioners must also file a statement within thirty days after leaving office. Forms and instructions are available in the City Clerk's office.

Compensation The City Council may, by resolution, determine whether, and in what amount, compensation will be provided for members of the city's commission, board and committees. Without a city council resolution establishing compensation, it is conclusively presumed that no compensation is to be provided.

MAXIMIZING YOUR CONTRIBUTION

You and Your Commission

As a commissioner, you should remember that the success or failure of your efforts is largely dependent on the quality of cooperation among the individual members of your commission. To help build a consensus around common goals and objectives, you will often have to first reconcile contradictory viewpoints often results of differing degrees of understanding and shows a willingness to consider objectively the real issues.

Part of this cooperation can be produced by setting the time and place of meeting so that under normal conditions each member and interested citizen can attend. Remember that cooperation begins with mutual respect for each other's problems, as well as opinions. Another way of developing this cooperation is to do your part in ensuring that meetings proceed in an orderly and constructive manner. The chairperson is largely responsible for seeing that consideration of items on the agenda moves along without delay but with reasonable time allocated to each; he or she is to ensure that petitioners, proponents and opponents are heard but not permitted to disrupt the meetings, and that all actions are properly moved, seconded and voted upon. You can assist the chairperson greatly by becoming familiar with the basic rules of parliamentary procedure and devoting some preparation to the presentation you plan to make.

Application of the team concept is always essential to worthwhile and acceptable recommendations. This does not mean that all conflict will or should be eliminated, because controlled conflict, leading to a rational decision, is the heart of our democratic process.

Commissions should establish long and short-range goals to help them meet their objectives. Goals will help members maintain a focus on the purpose of their commission, board, or committee.

Know Your Objectives

One of the first duties as a new commissioner is to be informed about the law in which you will operate. Some of this information may be obtained by referring to the ordinance or State Code sections that authorize your particular commission and the remaining information can be obtained by consulting with the department head or staff member with whom you will work.

Remember that a commission's responsibility is to advise, suggest, listen, evaluate, and recommend. The responsibility for allocating public resources properly rests with the City's duly elected representatives and cannot be delegated to an outside group.

One method of observing this distinction is for the commission to make its final recommendations in the form of possible alternative courses of action, and to provide the City Council with an evaluation of each of the alternatives proposed. In this matter, it is clear that the proper public official must make the final decision.

Keep the Lines of Communication Open

As a member of the community, a commissioner is in the unique position of serving as a liaison between City Hall and the general public helping to reconcile contradictory viewpoints and building consensus around common goals and objectives. The commissioner must, therefore, serve as a focal point for two-way communication adequately presenting the program of the City government and your respective commission, and also providing a channel for citizen expression.

If a commissioner is not careful, this channel of communication may break down in one of two ways. First, there is a danger that the channel may become one-way; the commissioner may become so concerned with transmitting to the residents the proposals originated in City Hall that no time is left for carrying back to City officials the reactions and opinions of the man in the street.

A second risk is that members may succumb to the temptation to substitute their own opinions for those of the general public. This is seldom malicious or even intentional, but is the result of too much talking and not enough listening.

Be Thorough in Your Recommendations

In connection with your advisory role, you may often expect to spend many hours in research of a particular problem area and should endeavor to maintain an objective attitude in this fact-find phase.

If necessary, you should visit and inspect locations under consideration before commission meetings and be fully prepared to discuss, evaluate, and act on such matters when they come up. Study based on such practices will materially strengthen the value of your recommendations.

Relations with the Administration

The administrative staff, through the chain of command, works for and is responsible to the City Manager. The City Manager has directed staff to comply to the greatest extent possible with commission requests. As used here, administrative staff means all City employees except the City Treasurer, City Clerk and City Attorney. The first two are elected officials and the Attorney is appointed by and reports directly to the City Council.

Commissions, boards, and committees should feel free to utilize administrative staff in meeting their goals and objectives. Staff liaisons and support can be used to provide background and views on important issues, to keep the commission on track and focused, to interpret elected officials and administrative actions and policies, and to coach and help commission members develop their skills. However, to avoid placing the staff in a difficult position and to facilitate effective communications, remember that all your actions as a commissioner must be done with the approval of the commission as a body. In contacting City personnel on commission business, the proper channel is through the commission chairperson to the departmental liaison associated with the commission. If there is no departmental liaison, a formal request should be submitted by the commission chairperson to the involved City department through the City Manager.

The Public Trust

The value of a commission's recommendation can be greatly harmed by implications that the self-interests of the individual commissioners are involved. To avoid such a situation and provide a guide by which the new commissioner can measure his own actions and, in turn, be judged by those he serves, the following suggestions are offered:

1. Never use information received in the performance of duty as a means for making private profit or advancing the financial interests of others.
2. Separate distinctly your official conduct from your personal affiliations.
3. Never discriminate unfairly by dispensing special favors or privileges to anyone.
4. Do not accept gifts or benefits, which could be construed by reasonable persons as influencing the performance of official duties.
5. Make every effort to find more efficient and economical ways of accomplishing assigned objectives.
6. Exercise caution so that a statement cannot be construed as a promise, which would be binding upon the duties of office inasmuch as private word can be binding on public duty.
7. Avoid participation in the consideration and voting on any matter where a personal conflict of interest may be involved. When such a situation does arise, disqualify yourself immediately and state the nature of the conflict.

APPENDIX

- Municipal Law Guidebook for Elected and Appointed City Officials

CITY OF MONTEREY PARK

MUNICIPAL LAW GUIDEBOOK FOR ELECTED AND APPOINTED CITY OFFICIALS

PRESENTED BY THE

OFFICE OF THE CITY ATTORNEY



MAY 2, 2016

(DISCARD VERSIONS BEFORE ABOVE DATE)



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INTRODUCTION

The Monterey Park City Attorney's office prepared this Guidebook for elected and appointed City officials (collectively "Officials") to provide an overview of some basic laws and procedures that will affect you while in public service. This Guidebook is not meant to provide an in-depth discussion regarding all of these laws; they are complex and the legal outcome in a particular circumstance often depends on the facts surrounding each case.

Since civil and criminal liability can arise in some situations, it is important for you to consult with the City Attorney's office before taking action that may be regulated by the laws and regulations cited in this Guidebook. We hope only to give you a basic understanding.

Please note that the City Attorney's office is unable to provide assistance in some circumstances because the nature of an inquiry or concern is private or creates a conflict of interest. Should that occur, we will refer you to the appropriate agency or to your private attorney.

THE RALPH M. BROWN ACT

In 1953, the California Legislature enacted the Ralph M. Brown Act (Government Code¹ §§ 54950-54962), commonly referred to as the "Brown Act" or "Open Meeting Law," to ensure that deliberations and actions of local public agencies are performed at meetings open to the public and free from any veil of secrecy.² To further this overall goal, the Brown Act requires that the City's meetings be properly noticed and generally open to the public.

➤ *Application of the Act*

Under the Brown Act, "legislative bodies" must hold meetings that are open to the public.³ The City Council and most City commissions, e.g., the Planning Commission, are legislative bodies.⁴ Note that Officials who have not yet assumed the duties of office must still conform their conduct to Brown Act requirements and are subject to Brown Act penalties as if they had assumed office.⁵

¹ Further references to an unspecified code are to the Government Code.

² § 54950.

³ *Ibid.*

⁴ § 54952(b).

⁵ § 54952.1.

➤ *What is a Meeting?*

A “meeting” is generally **any gathering** of a majority of the members of a legislative body to hear, discuss, or deliberate regarding any issue that is within its subject matter jurisdiction.⁶ This includes using direct communication, personal intermediaries, or technological devices to develop a collective concurrence on any matter by members of the legislative body.⁷

Exceptions to this general rule are limited to

- Individual conversations between an Official and any other person;
- A majority of Officials attending a gathering open to the public involving issues of general interest to the public, e.g., a conference, if the Officials do not discuss business;
- Attending an open and publicized meeting organized to address a topic of local community concern if the meeting is not sponsored by the City and Officials do not discuss business;
- Attending one of the City’s standing committee if Officials in attendance do not discuss business; or
- Attending a purely social event if the Officials do not discuss business.⁸

It is important to keep this rule in mind whenever a majority of Officials meet, e.g., after a regularly scheduled meeting is adjourned. While such gatherings are not impermissible, Officials must be aware that conversation topics are generally limited to matters other than business.

Remember that a *minority* of Officials may attend any event; such a gathering is not defined as a meeting under the Brown Act. As explained more fully below, however, an Official may be required to disclose his or her attendance at a particular event under some circumstances.

Also remember, however, that serial meetings are prohibited. A serial meeting occurs where less than a quorum of public officials meet in a series of different meetings, but eventually the majority of a legislative body is involved. There are two classic examples of serial meetings.

The first is where Official 1 contacts Official 2 who contacts Official 3 regarding a particular issue that is within the subject-matter jurisdiction of the legislative body. This process creates a quorum and can lead to a collective consensus with regard to action that should be taken.⁹

⁶ § 54952.2(a).

⁷ § 54952.2(b); see also *Wolfe v. City of Fremont* (2006) 50 Cal.Rptr.3d 524.

⁸ § 54952.2(c).

⁹ See *Sac. Newspaper Guild v. Sac. County Bd. of Suprs.* (1968) 263 Cal.App.2d 41.

As can be seen, the advances in technology can present a problem for Officials. In particular, the ease of using the “reply” or “forward” e-mail options can quickly lead to a serial meeting (example: Official 1 sends an e-mail to Official 2 who forwards it to Official 3 along with Official 2’s comments, etc.). While a unilateral e-mail may be permissible (i.e., where there is no expectation or solicitation for a response)¹⁰ an electronic “conversation” is not.¹¹

The other type of serial meeting is a “hub and spoke” meeting. This occurs where a staff member, for example the city manager, telephones individual Officials and reveals the respective views of the other members. As stated by the Attorney General,

“problems arise when systematic communications begin to occur which involve [Officials] acquiring substantive information for an upcoming meeting or engaging in debate, discussion, lobbying or any other aspect of the deliberative process either among themselves or with staff.”¹²

In both of these examples, the Brown Act is violated since the public is deprived of meaningful participation and the collective concurrence of a majority is reached without a public meeting. Accordingly, it is important to exercise caution when using the convenience of communication technology and social media; while advances in technology can facilitate communication, the very convenience provided by such technology can result in inadvertent violations of the Brown Act.

The mayor or chairperson or a majority of Officials on a particular legislative body may schedule special meetings at any time and location within the City’s jurisdiction (with certain exceptions).¹³ Note, however, that that a minimum of 24 hour notice must be given for special meetings.¹⁴

¹⁰ *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 376.

¹¹ *Ibid.*

¹² Civil Law Division, California Attorney General’s Office, The Brown Act: Open Meetings for Local Legislative Bodies 12 (Ted Prim, et al., ed. 2003).

¹³ § 54956.

¹⁴ *Ibid.*

➤ *Action Taken*

A legislative body may generally only take action on matters that are included on a properly posted agenda.¹⁵ There are exceptions to this general rule: Officials may briefly respond to statements or questions made during public comment; may ask for clarification on a topic; make brief announcements; report on activities; or direct staff to place a matter on a future agenda.¹⁶

Taking action¹⁷ is defined as:

1. A collective decision by a majority of the members of a legislative body;
2. A collective commitment or promise by a majority of the members to make a positive or negative decision; or
3. An actual vote by a majority of the members of the legislative body sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

Please note that Officials who attend a meeting where action is taken in violation of the Brown Act are subject to criminal penalties.¹⁸

➤ *Public Attendance and Comments*

With certain specific exceptions, all meetings must be open to the public and attendance cannot be conditioned upon submitting personal information.¹⁹ Officials may adopt reasonable regulations for public comment.²⁰

Persons attending a meeting may record the proceedings using any reasonable method that does not interrupt the proceeding.²¹ This right does not, however, include recording closed sessions.

The Act requires that every agenda provide an opportunity for public comment.²² As already explained, Officials may respond to public remarks.

¹⁵ § 54954.2(a).

¹⁶ *Ibid.*

¹⁷ § 54952.6.

¹⁸ § 54959

¹⁹ § 54953.3.

²⁰ § 54954.3(b).

²¹ § 54953.5.

²² § 54954.3(a).

MEETING PROCEDURES

Meetings before public bodies are often opportunities for persons to express their displeasure or support for particular matters being considered. Some may regard such meetings the quintessential opportunity to exercise their First Amendment rights.

It is important, however, to remember that meetings held by the City's council and commissions are also government proceedings that are necessary to conduct City business.²³ Accordingly, the City may impose limitations upon persons attending a meeting in order to help facilitate the orderly progression of such meetings.²⁴

➤ *Regulation Permitted.*

The right to petition government and free speech are activities protected by the United States and California Constitutions.²⁵ These protections, however, are not unlimited. The United States Supreme Court recognizes that

“[e]ven protected speech is not equally permissible in all places and at all times. Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities.”²⁶

The City Council, and other legislative bodies in the City, may therefore regulate the activities of persons attending a City meeting to facilitate the orderly progression of the meeting.²⁷ Such regulations, however, must govern the actions of a person; they cannot generally constrain the content of that person's speech.²⁸ A commission may not, therefore, prohibit public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body.²⁹ It may, however, prevent members of the public from commenting on matters that are not within the commission's subject matter jurisdiction.³⁰ It would be improper, therefore, for individuals to speak on matters other than such issues.

²³ *White v. City of Norwalk* (9th Cir., 1990) 900 F.2d 1421, 1425.0

²⁴ *Ibid.*; § 54954.3(b).

²⁵ U.S. Const. amends. I and XIV; Cal. Const. Art. I §§ 1, 2, and 4.

²⁶ *Cornelius v. NAACP Legal Defense and Education Fund* (1985) 473 U.S. 788, 799-800.

²⁷ §§ 36813, 54954.3(b).

²⁸ § 54954.3(c); *In re Kay et al.* (1970) 1 Cal.3d 930, 942; *Acosta v. City of Costa Mesa* (9th Cir. (Cal.) 2013) 718 F.3d 800.

²⁹ § 54954.3(c).

³⁰ § 54954.3(a); 78 Op. Cal. Att'y. Gen. 224 (1995).

➤ *Willful disturbance of a meeting is unlawful.*

Penal Code § 403 states, in relevant part, that “[e]very person who . . . willfully disturbs or breaks up any . . . meeting that is not unlawful in character . . . is guilty of a misdemeanor.” This provision is interpreted as applying to persons who intentionally commit acts that violate implicit customs or explicit rules for a meeting that were actually known, or should have been known.³¹ Shouting, yelling, and clapping have all been held to be sufficiently disruptive to permit persons to be removed from and arrested at local government meetings.³²

The City Council, and other legislative bodies, may adopt rules and procedures for the orderly conduct of its meetings.³³ If a person disrupts a meeting, the legislative body may, in addition to having a person arrested, remove the person disturbing the meeting or clear the meeting room.³⁴

The mayor or chairperson is generally in charge of keeping order. They, or a majority of officials on a commission, may impose rules of decorum to facilitate the orderly progression of a meeting.³⁵

DECISION-MAKING

Ordinarily, a public decision-making body takes either legislative or adjudicative actions regarding a matter. Legislative actions are mainly political where the public body “declare[s] a public purpose and make[s] provisions for the ways and means of its accomplishment.”³⁶ In essence, legislative action formulates rules that apply to all future cases.³⁷

Adjudicative actions “apply law that already exists to determine specific rights based upon specific facts ascertained from evidence adduced at a hearing.”³⁸ Examples of legislative actions include plan amendments and rezones; adjudicative actions include decisions regarding conditional use permits and approving tentative maps.³⁹

³¹ *In re Kay*, 1 Cal.3d at 943.

³² See *Kindt v. Santa Monica Rent Control Board* (9th Cir. (Cal) 1995) 67 F.3d 266, 268-69; *Owolo v. City of Inglewood* (9th Cir., 1996) 103 F.3d 140, 1996 WL 681262, at **1.

³³ §§ 36813, 54954.3.

³⁴ §§ 36813, 54957.9.

³⁵ See, e.g., § 36813; *Neuens v. City of Chino* (1965) 233 Cal.App.2d 775, 778; 75 Op. Cal. Att’y. Gen. 89 (1992).

³⁶ *Marblehead v. City of San Clemente* (1991) 226 Cal.App.3d 1504, 1509.

³⁷ *Dominey v. Dept. of Personnel Admin.* (1988) 205 Cal.App.3d 729, 737-38.

³⁸ *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 38 [overruled on other grounds].

³⁹ *Horn v. Ventura County* (1979) 24 Cal.3d 605, 619; see also *San Francisco Tomorrow v. City and County of San Francisco* (2014) 228 Cal.App.4th 1239, 1254; *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, 1058-1059.

➤ *Due Process*

A quasi-judicial action triggers the procedural due process rights of the United States and California Constitutions.⁴⁰ Under such circumstances, a party appearing before the legislative body is entitled to

1. Notice of the proposed action;
2. Reasons for the action;
3. A copy of the evidence on which the action is based; and
4. The right to respond “before a reasonably impartial, noninvolved reviewer.”⁴¹

The last requirement is one of fundamental fairness. It is a long-standing rule that quasi-judicial bodies can only make decisions based upon the evidence before them; they “cannot act on their own information.”⁴² A legislative body acting upon its own information, without a party’s input, does not conduct a fair hearing.⁴³

➤ *Independent Investigation*

There is nothing that prohibits an Official from conducting an independent investigation.⁴⁴ However, it is important that an Official disclose his or her investigation and ex parte contact if information obtained through that contact could influence the Official’s decision. Disclosure of this information provides a party with the opportunity to challenge or explain that evidence. Without such disclosure, due process would be violated.

CONFLICT OF INTEREST ISSUES

Conflict of interest issues are one of the most complex areas of law that will affect you as a public Official. There are a myriad of laws and regulations that govern conflicts of interest. While the City Attorney’s office is available to discuss conflict of interest issues, the duty is on you to present any information concerning potential conflicts of interest to the City Attorney’s office.

While an Official’s conflict may render City action in a particular matter ineffective, the Official may be personally liable for criminal and civil penalties. Additionally, under most

⁴⁰ U.S. Const. amend. V, XIV; Cal. Const. art. I, §§ 7, 15.

⁴¹ *Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 581.

⁴² *English v. City of Long Beach* (1950) 35 Cal.2d 155.

⁴³ *Safeway Stores, Inc. v. City of Burlingame* (1959) 170 Cal.App.2d 637, 647-48; *La Prade v. Dept. of Water & Power* (1945) 27 Cal.2d 47, 51-52.

⁴⁴ *Todd v. City of Visalia* (1967) 254 Cal.App.2d 679, 691

circumstances, the City Attorney’s advice on a particular situation will not safeguard the Official from personal liability; the City Attorney does not represent Officials in their personal capacity – our client is the City itself.

➤ *Common Law Doctrine*

In 1928, the California Supreme Court enunciated the common law doctrine against conflicts of interest as follows: A public officer is impliedly bound to exercise the powers conferred on the officer with disinterested skill, zeal, and diligence and primarily for the benefit of the public.⁴⁵

This common law doctrine was developed through court decisions and is generally secondary to the significant regulations adopted by the Legislature and the Fair Political Practices Commission⁴⁶ (“FPPC”). These laws and regulations are part of the Political Reform Act (“PRA”).

➤ *Political Reform Act*

The PRA regulates conflicts of interest by requiring that Officials disclose *potential* conflicts and prohibiting their participation in decision-making where there are *actual* conflicts. The California Attorney General, the FPPC, and local district attorneys are empowered to enforce the PRA through criminal sanctions and civil penalties.⁴⁷ Generally, criminal violations of the Act are prosecuted as misdemeanors,⁴⁸ but may also be pursued as felonies.⁴⁹

Although the penalties for violations of various provisions of the Act vary, civil penalties are generally based upon the amount of money or value of a gift or contribution not reported; penalties can be as high as ten thousand dollars (\$10,000) or three times the amount not reported, whichever is greater.⁵⁰ Because good faith may sometimes be relevant in determining criminal and civil liability,⁵¹ it is particularly important to seek further advice whenever a potential problem appears.

➤ *General Rule for Disqualification*

The PRA states that “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his [or her] official position to influence a governmental decision in which he [or she] knows or has reason to know he [or she] has a financial interest.”⁵²

⁴⁵ *Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51.

⁴⁶ 2 Cal. Code of Regs. (“FPPC Regs.”) §§ 18700, *et seq.*

⁴⁷ §§ 91000 and 91001.

⁴⁸ § 91000.

⁴⁹ § 91002.

⁵⁰ § 91000.

⁵¹ § 91001(c).

⁵² § 87100.

Under the PRA, an Official participates in making a decision when the Official influences the decision-making process in any manner including, without limitation, proffering advice or making recommendations to a legislative body regarding a matter.⁵³ With certain exceptions,⁵⁴ Officials must refrain from participating in the decision-making process when it is reasonably foreseeable that the decision will have a material effect on the Official's financial interest distinguishable from that of the general public.⁵⁵

Regrettably, recent changes in the FPPC regulations made a complex area of the law even less understandable. Where Officials previously had some distinct guidance regarding potential conflicts of interest, the FPPC's current regulations generally lack such assistance. The best advice that we can provide when a conflict issue arises is to contact the FPPC and seek its assistance (www.fppc.ca.gov and 1-866-275-3772). Only FPPC advice can protect an Official from potential enforcement actions concerning conflicts of interest. With that caution, below is a general outline of the current requirements regarding conflicts of interest.

➤ *Determining When a Material Financial Interest Exists*

There is a complex set of FPPC regulations that determine whether an Official has a material interest in a governmental decision that would have a nontrivial and reasonably foreseeable effect on (1) the Official's financial interest in a business entity; (2) the Official's financial interest in real property; (3) the Official's financial interest in a source of income; (4) the Official's financial interest in a source of gifts; (5) the Official's personal finances; or (6) the personal finances of a member to the Official's immediate family:⁵⁶

1. The effect on an Official's business is material where the business (1) initiated the proceeding pertaining to the governmental decision; (2) offers to sell a service or a product to the Official's agency; (3) bids on or enters into a contract with the agency; (4) is either the manufacturer of any product purchased by the agency or the sales provider of products which amount to \$1000 or more within a 12-month period; (5) applies for a permit or other entitlement that the agency is authorized to issue; or (6) is subject to an action under the agency's regulatory authority.⁵⁷ Otherwise, the effect on an Official's business is material where an informed person would find it reasonably foreseeable that the decision would contribute to a change in the price of the company's stock or affect the value of a privately-held business.⁵⁸ Additionally, business costs related to travel, food, and lodging, made in the course of carrying out an agency function, are not material if it is authorized by the agency and the business provides the same services to the general public, unless these costs affect the value of the company or stock.⁵⁹

⁵³ FPPC Regs. § 18704(a-c).

⁵⁴ FPPC Regs. § 18704(d).

⁵⁵ § 87103; FPPC Regs. § 18703.

⁵⁶ FPPC Regs. § 18702.

⁵⁷ FPPC Regs. § 18702.1(a).

⁵⁸ FPPC Regs. § 18702.1(b).

⁵⁹ FPPC Regs. § 18702.1(a)(8), (b).

2. Generally, the effect on an Official's real property is material where it involves land use policies, improvements, zoning, or taxes applicable to the property, where it relates to the transfer of an interest in the property, where it involves consideration of a permit pertaining to the property, where it would affect the value, use, income potential, development potential, or character of the property, or would affect the value of property located within 500 feet of the Official's non-commercial property.⁶⁰ However, decisions which exclusively concern repair and maintenance of streets, sewers, and similar systems, and certain decisions which solely involve the adoption or amendment of a general plan, are not held to have a material financial effect on the Official.⁶¹

3. An Official will be materially affected if either the Official or the Official's spouse will receive salary, other payment for goods and services, or a gift from the person or entity that is the subject of a proceeding, or from an individual, nonprofit, or business that will be affected, or which the Official has reason to believe will be affected by the decision.⁶² The Official will also be affected if he or she receives income as a result of the sale of real property in which he or she has an ownership interest, where the purchaser is either the subject of the proceeding or has an interest in a business or property that will be affected by the decision.⁶³ Likewise, there is a material effect where the Official is promised, or receives income so that the source of the income may achieve a goal that is likely to be affected by the decision.⁶⁴

4, 5, and 6. The Official will be materially affected where the Official or his or her immediate family will "receive a measurable financial benefit or loss" as a result of a decision,⁶⁵ though certain exceptions apply.⁶⁶ As of the writing of this version of the Guidebook, the gift limitation is \$460 (this will be in effect until December 31, 2016).⁶⁷

➤ *Definition of "Income"*

"Income" includes, without limitation, dividends; rents; capital gains; salary; wages; gifts; loans; and your community property interest in spousal income. Except for gifts, the only income relevant to a conflict situation is income received from a source within the City; from a source presently doing, or planning to do, business within the City; and a source having done business in the City during the last two years.⁶⁸

⁶⁰ FPPC Regs. § 18702.2 (a-b).

⁶¹ FPPC Regs. § 18702.2(c).

⁶² FPPC Regs. §§ 18702.3(a), 18702.4.

⁶³ FPPC Regs. § 18702.3(b).

⁶⁴ FPPC Regs. § 18702.3(c).

⁶⁵ FPPC Regs. § 18702.5(a).

⁶⁶ FPPC Regs. § 18702.3(b).

⁶⁷ FPPC Regs. § 18940.2.

⁶⁸ § 82030.

➤ *Effect of Decision on Official Distinguishable From Effect on Public Generally*

You may participate in a decision, even when it would have a material financial effect, if you are affected in the same manner as the general public.⁶⁹ This occurs when a legislative body's decision (1) will affect a significant segment of the public, defined as at least 25% of the business or nonprofit entities, real property, or individuals within the jurisdiction; and (2) the financial effect on the Official is "not unique."⁷⁰

An Official does not have a conflict of interest when a legislative body's decision is indistinguishable from the effect on the public generally.⁷¹ For example, changing the City's sales tax does not create a conflict because it affects all residents, even though it may significantly affect an Official's income. Likewise, where an Official's spouse owns a business located near a major street, and over half of the City's commercial properties are also located near that street, that official may participate in decisions relating to improvements made on the street, because the improvements would affect most businesses in the City and would not "uniquely" affect the Official's spouse.⁷²

➤ *Prohibition on Participation or Influencing Decision Once an Official is Disqualified*

If you have a conflict of interest, you are disqualified from participating in the decision-making process for that matter. Accordingly, you may not have any influence over the decision before it comes before your legislative body; you must declare for the record the nature of your conflict; you must leave the room when it comes before the legislative body (unless the matter is on the consent calendar, in which case you need not leave the room⁷³); and you may not discuss the matter with other Officials or with City staff members. An Official may, however, for certain defined personal interests make a public appearance before his or her legislative body as a member of the general public, but only in a personal capacity to comment on matters related solely to personal interests.⁷⁴

As noted throughout this Guidebook, the PRA is extremely complex; this paper only provides a summary and is not meant to provide legal advice. Specific questions should be directed to the City Attorney's office for a determination well in advance of when a decision needs to be made.

➤ *Government Code § 1090*

Section 1090 prohibits Officials and City employees from having financial interests in contracts made by them or by any board or body of which they are members. This prohibition applies in

⁶⁹ FPPC Regs. § 18700(a).

⁷⁰ FPPC Regs. § 18703.

⁷¹ FPPC Regs. § 18707(a).

⁷² FPPC Adv. A-15-126 (2015).

⁷³ FPPC Regs. § 18704.5(d)(1).

⁷⁴ FPPC Regs. §§ 18702.4, 87105(d)(3), 18704(d)(2), 18707.

two basic situations. First, if the financially interested Official or City employee is a member of a board or other body that actually executes the contract (e.g., the City Council), the potential conflict prohibits the City from entering into the proposed contract, regardless of whether or not the Official participates in or abstains from the actual decision, unless certain limited exceptions apply. Second, if a staff member has a financial interest in a contract with the City, there is a conflict only if that staff member actually participates in the making of the contract.⁷⁵ In either case, if such a contract is made, the City may void it.⁷⁶

You should also understand that the term “contract” is used very broadly and applies to any agreement between the City and another party whether written or oral and whether formal or informal. Additionally, the prohibitions of Section 1090 apply equally to the councilmember who votes on a written contract, a member of an advisory board who makes a recommendation on a contract, and to an employee who advises the council on a particular contract.⁷⁷

Note that a § 1090 violation may result in severe criminal penalties. While there are certain exceptions to the general prohibition, it is better to contact the City Attorney’s office with any questions you may have.

➤ *No Free Passes*

A somewhat dated provision of the California Constitution prohibits any public officeholder from accepting a pass or discount from a transportation company. Specifically, Article XII, § 7, of the Constitution states that

“[a] transportation company may not grant free passes or discounts to anyone holding an office of the State; and the acceptance of a pass or discount by a public officer, other than public utilities commissioner, shall work a forfeiture of that office ...”

Actions by the Southern Pacific Railroad leading to political corruption caused this provision to be added to the Constitution in 1879, but it has rarely been used. The California Attorney General, however, has opined that an official may forfeit their office because of this prohibition even though (1) the official was completely unaware of the provision; (2) the official had no regulatory power or other official influence over the activities of the transportation company or any other transportation company; (3) the transportation company’s activities were not restricted to intrastate business, but included interstate and international operations as well; (4) the official, upon learning of the prohibition, immediately reimbursed the carrier for the transportation received; and (5) the official’s travel was personal travel rather than official business.⁷⁸

⁷⁵ *Fraser-Yamor Agency v. County of Del Norte* (1977) 68 Cal.App.3d 201.

⁷⁶ § 1092.

⁷⁷ *Stigal v. City of Taft* (1962) 58 Cal. 2d 565; *City Council v. McKinley* (1978) 80 Cal. App. 3d 204; and *Schaefer v. Berinstein* (1956) 140 Cal. App. 2d 278.

⁷⁸ 76 Op. Cal. Att’y. Gen. 1 (1993).

It is unlikely that this provision would apply to special rates given to the public generally. Moreover, the Attorney General's Office has opined that it does not apply to the use of Frequent Flyer miles or to tickets obtained by a public official when the eligibility is based on the fact that the official's spouse is an airline employee.⁷⁹ Finally, this provision does not apply if the ticket is provided by a non-"transportation company," i.e., provided by your employer, as a gift from a friend, or to enable you to make an out-of-town speech or attend an out-of-town event. Note, however, that such gifts would need to be disclosed under the PRA.

➤ *AB 1234 Ethics Training*

AB 1234⁸⁰ allows the City to reimburse elected and appointed officials for actual and necessary expenses incurred in the performance of official duties in accordance with a written policy adopted by the City Council. Such a policy⁸¹ identifies the types of expenses for which the City can reimburse a public official relating to travel, meals, lodging, and other actual and necessary expenses. Among other things, AB 1234 requires the person attending activities and receiving reimbursements to give a brief report to the City Council at its next regular meeting regarding those official duties.

Public officials must also receive at least two hours of training in ethics every two years;⁸² newly elected public officials must obtain such training within one year after being elected.⁸³ A local agency or an association of local agencies may offer one or more training courses, or sets of self-study materials with tests, to meet the requirements. The courses may be taken at home, in-person, or online.

If you are interested in the online training, go to localethics.fppc.ca.gov/login.aspx.

➤ *Mass Mailings*

The PRA also regulates "mass mailings" (Government Code §§ 81000-91014). In relevant part, the PRA states: "No newsletter or mass mailing shall be sent at public expense."⁸⁴ The term "mass mailing" means "over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry."⁸⁵

⁷⁹ 80 Op. Cal. Att'y. Gen. 146 (1997); 85 Ops. Cal. Atty. Gen. 40 (2002).

⁸⁰ §§ 53232, *et seq.*

⁸¹ *Id.*

⁸² § 53235(b).

⁸³ § 53235.1(b).

⁸⁴ § 89001.

⁸⁵ § 82041.5.

The PRA prohibits *any* public money from being spent to *distribute* a mass mailing.⁸⁶ Moreover, the law prohibits more than \$50 of public money from being spent to design, produce, or print an otherwise prohibited mass mailing.⁸⁷

Mass mailings are prohibited when they “feature” an elected officer as follows:⁸⁸

“(A) Features an elected officer affiliated with the agency which produces or sends the mailing; or

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.”

The phrase “features an elected officer” means that “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.”⁸⁹ Note, however, that simply referencing an elected official’s name may be impermissible if the mailing is prepared or sent in “cooperation, consultation, coordination, or concert with the elected officer.”⁹⁰

An item is “sent” if delivered to residences, businesses, or post office boxes by any means (not simply the mail).⁹¹ Items that are publicly available for distribution at meetings, or can be actively obtained by the public from public facilities (e.g., City Hall) are not “sent” for purposes of the PRA. Moreover, the regulation of mass mailings does not apply to solicitations for information; only to unsolicited requests.⁹²

The mass mailing regulations affect are written documents, records, videotapes and buttons.⁹³ However, these regulations do not affect webpages.⁹⁴ Further, the PRA’s 200 item limitation applies on a calendar basis, i.e., up to 200 similar items may be sent each calendar month.⁹⁵

⁸⁶ FPPC Regs. § 18901 (a)(3)(A).

⁸⁷ FPPC Regs. § 18901(a)(3)(B).

⁸⁸ FPPC Regs. § 18901(a)(2).

⁸⁹ FPPC Regs. § 18901(c)(2).

⁹⁰ FPPC Regs. § 18901(a)(2)(B).

⁹¹ FPPC Regs. § 18901(a)(1).

⁹² §§ 82041.5, 89001; FPPC Regs. § 18901(a)(4).

⁹³ FPPC Regs. § 18901(a)(1).

⁹⁴ *In re Peltzer*, FPPC Priv. Adv. Ltr. A-97-106 (Mar. 25, 1997); see also *In re Foote*, CA FPPC Adv. A-98-114 (1998) website links not restricted by the Act’s prohibition on publicly funded mass mailings; *In re Ratto*, CA FPPC Adv. A-07-085 (2007) [candidate information may be placed on agency website].

⁹⁵ FPPC Regs. § 18901(a)(4).

PUBLIC RECORDS

The Public Records Act (“Records Act”) defines a public record as

“any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any ...local agency regardless of physical form or characteristics.”⁹⁶

A “writing” includes

“handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents....”⁹⁷

Generally, all public records must be “open to inspection at all times during the office hours of the...local agency and every person has a right to inspect any public record....”⁹⁸ Based on these statutory definitions, virtually every piece of information created, received, or stored in the course of performing City business constitutes a public record and may be inspected by the public upon request.

➤ *Time for responding to a PRA request.*

As stated above, public records must generally be available for public inspection during the City’s business hours. If public records are stored on medium other than paper, e.g., CD-ROMs or microfiche, equipment for viewing these records must be made available for the public.⁹⁹

Persons may also request that the City provided them with copies of public records. Ordinarily, public agencies must respond to requests for copies of public records within ten (10) days. In “unusual” circumstances, the City may extend the time for responding by an additional fourteen (14) days if the city manager, or designee, explains the reasons for the delay to the requestor within the initial ten day time period.¹⁰⁰

The definition of “unusual circumstances” includes (1) “[t]he need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) “[t]he need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; (3)

⁹⁶ § 6252(d).

⁹⁷ § 6252(e).

⁹⁸ § 6253(a).

⁹⁹ 64 Ops. Cal. Atty. Gen. 317 (1981); 57 Op. Cal. Att’y. Gen. 307, 311 (1974); see §§ 6253.1, 6253.9.

¹⁰⁰ § 6253(c).

“[t]he need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein”; and (4) “[t]he need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.”¹⁰¹

➤ *When may public records be withheld?*

As stated above, virtually everything drafted, received, or kept by the City constitutes a public record. However, although the PRA favors disclosure of public records, cities are generally not required to *create* documents in response to a public record request.¹⁰² Nor must the City comply with requests for documents that are unduly burdensome.¹⁰³

Moreover, there are specific types of documents that may be withheld by public agencies for other reasons. A partial list of exempt City records includes:

- Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the City in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.
- Records pertaining to pending litigation to which the City is a party until the pending litigation or claim is finally adjudicated or settled.
- Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.
- Other than as specifically required by the Government Code, records of complaints, investigations, intelligence information, or security procedures of the police and fire departments (code enforcement).
- Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination.
- The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the City relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has

¹⁰¹ § 6253(c)(1-4).

¹⁰² *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754.

¹⁰³ *State Bd. of Equalization v. Super. Ct.* (1992) 10 Cal.App.4th 1177.

been acquired or all of the contract agreement obtained.

- Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.
- Records the disclosure of which is exempted or prohibited pursuant to federal or state law.
- Information contained in applications for licenses to carry firearms that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.¹⁰⁴

➤ *Assistance with identifying public records.*

The City is required to assist persons seeking public records by helping them “make a focused and effective request that reasonably describes an identifiable record...”¹⁰⁵ To fulfill this obligation (with certain exceptions¹⁰⁶), the City must take the following steps “to the extent reasonable under the circumstances”¹⁰⁷:

- Help the requestor identify those documents that meet the request “or to the purpose of the request”;
- “Describe the information technology and physical location in which the records exist”; and
- “Provide suggestions for overcoming any practical basis for denying access to the records or information sought.”¹⁰⁸

The City cannot recoup its costs for such assistance from the requestor. Before June 4, 2014, the City could seek reimbursement for its costs. Article XIII B, § 6, of the California Constitution generally provides that, when the state mandates a program or higher level of service on a local government, it *must* provide funds to the local government to reimburse costs related to the state mandate.

On June 3, 2014, however, voters approved Proposition 42, the California Compliance of Local Agencies with Public Act, which amended Article XIII B section 6(a) to provide that “the Legislature may, but need not, provide a subversion of funds for... (4) Legislative mandates

¹⁰⁴ § 6254.

¹⁰⁵ § 6253.1(a).

¹⁰⁶ § 6253.1(d).

¹⁰⁷ § 6253.1(a).

¹⁰⁸ § 6253.1(a)(1-3).

contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.” Proposition 42 also added Article I, section 3(b)(7), which provides that, “in order to ensure public access to the meetings of public bodies and the writings of public officials and agencies,” local agencies must comply with the PRA and the Brown Act. Collectively, these amendments provided that the state legislature was not required to reimburse local agencies for funds expended in connection with the CPRA.

Where there has been a change in the law, the Department of Finance may file a request with the Commission to adopt a new test claim decision upon a showing that the state's liability under Article XIII B section 6 has been modified.¹⁰⁹ On January 21, 2015, the Department of Finance filed a request for redetermination of prior test claims concerning the CPRA, and the Commission found that Proposition 42 eliminated the state's liability for reimbursement, beginning on June 4, 2014.¹¹⁰ The decision was adopted July 24, 2015, and served August 4, 2015.

➤ *Records Provided to a Majority of the City Council*

The Government Code¹¹¹ provides that

“[A]gendas of public meetings and any other writings, *when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records . . . and shall be made available upon request without delay.*”

As seen by the emphasized language, virtually *any writing*, that was distributed to a majority of the City Council (or other legislative body) is a public record and must be available for public inspection. As noted above, such writings include electronic mail correspondence with City Councilmembers. Consequently, if it is obvious (or reasonably certain) that a majority of Councilmembers received a writing, it is important that a copy be provided to the City Clerk for filing and inspection. This is true even if an appointed public official, such as the City Manager, did not receive a copy of the correspondence. Accordingly, please ensure that the City Clerk receives a copy of all writings you may receive where it is apparent that the same writing was provided to a majority of the City Council (or other legislative body).

CONCLUSION

As noted earlier, this Guidebook is only a superficial overview of laws and regulations that will affect you while in public service. Questions or concerns regarding specific facts should be directed to the City Attorney's office.

¹⁰⁹ § 17570(c).

¹¹⁰ Cal. Com. State Mandates (2015) Decision No. 14-MR-02.

¹¹¹ § 54957.5(a) (emphasis added).

If you are interested in reviewing any of the legal sources cited in this Guidebook, or would like to contact one of the State Agencies, the following information may be helpful:

For case law - <http://www.findlaw.com/cacases/>

For California Statutes - <http://www.leginfo.ca.gov/calaw.html>

For California Regulations - <http://ccr.oal.ca.gov>

For Attorney General Opinions (since 1986) - <http://caag.state.ca.us/opinions/search.htm>

For the FPPC - <http://www.fppc.ca.gov/> and 1-866-275-3772

For an overview of ethics - http://www.cacities.org/resource_files/25287.ELR2007.pdf

Please let us know if you have any questions.

ATTACHMENT 2

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century



MISSION:

To restore and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION:

To be recognized and respected as the leading advocate for the common interests of California cities.



About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts educational conferences and research, and publishes *Western City* magazine.

About *Western City* Magazine

Western City is the League of California Cities' monthly magazine. *Western City* provides lively, interdisciplinary analyses of issues affecting local governance. Its goal is to offer immediately practical ideas, information and bigger-picture policy issues and trends. For more information, visit www.westerncity.com.

"Rosenberg's Rules of Order" first appeared in *Western City* magazine in August and September 2003.

About the Author

Dave Rosenberg is an elected county supervisor representing the 4th District in Yolo County. He also serves as director of community and intergovernmental relations, director of operations, and senior advisor to the governor of California. He has served as a member and chair of numerous state and local boards, both appointed and elected, and also served on the Davis City Council for 12 years, including two terms as mayor. He has taught classes on parliamentary procedure and has served as parliamentarian for large and small governing bodies. In the fall of 2003, Gov. Davis appointed Rosenberg as a judge of the Yolo County Superior Court.

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

by Dave Rosenberg

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that hasn't always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules, *Robert's Rules of Order*, which are embodied in a small but complex book. Virtually no one I know has actually read this book cover to cover.

Worse yet, the book was written for another time and purpose. If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook. On the other hand, if you're running a meeting of a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order. Hence, the birth of "Rosenberg's Rules of Order."

This publication covers the rules of parliamentary procedure based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified and slimmed down for 21st century meetings, yet they retain the basic tenets of order to which we are accustomed.

"Rosenberg's Rules of Order" are supported by the following four principles:

1. **Rules should establish order.** The first purpose of the rules of parliamentary procedure is to establish a

framework for the orderly conduct of meetings.

2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate and those who do not fully understand and do not fully participate.
3. **Rules should be user-friendly.** That is, the rules must be simple enough that citizens feel they have been able to participate in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of the rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, the majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

The Chairperson Should Take a Back Seat During Discussions

While all members of the governing body should know and understand the rules of parliamentary procedure, it is the chairperson (chair) who is charged with applying the rules of conduct. The chair should be well versed in those

rules, because the chair, for all intents and purposes, makes the final ruling on the rules. In fact, all decisions by the chair are final unless overruled by the governing body itself.

Because the chair conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the body in debates and discussions. This does *not* mean that the chair should not participate in the debate or discussion. On the contrary, as a member of the body, the chair has full rights to participate in debates, discussions and decision-making. The chair should, however, strive to be the last to speak at the discussion and debate stage, and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, published agenda; informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon road map for the meeting. And each agenda item can be handled by the chair in the following basic format.

First, the chair should clearly announce the agenda item number and should clearly state what the subject is. The chair should then announce the format that will be followed.

Second, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body,

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire to move on.

a staff person, or a committee chair charged with providing information about the agenda item.

Third, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.

Fourth, the chair should invite public comments or, if appropriate at a formal meeting, open the meeting to public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of each public speaker. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and a vote on the motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or a very brief discussion, the vote should proceed immediately, and there is no need to repeat the motion. If there has been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then the “nays” is normally sufficient. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise or unless a super-majority is required (as delineated later in these rules), a simple majority determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days’ notice for all future meetings of this governing body.”

Motions in General

Motions are the vehicles for decision-making. It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus on the motion before them.

Motions are made in a simple two-step process. First, the chair recognizes the member. Second, the member makes a motion by preceding the member’s desired approach with the words: “I move ...” A typical motion might be: “I move that we give 10 days’ notice in the future for all our meetings.”

The chair usually initiates the motion by:

1. Inviting the members to make a motion: “A motion at this time would be in order.”
2. Suggesting a motion to the members: “A motion would be in order that we give 10-days’ notice in the future for all our meetings.”
3. Making the motion.

As noted, the chair has every right as a member of the body to make a motion, but normally should do so only if he or she wishes a motion to be made but no other member seems willing to do so.

The Three Basic Motions

Three motions are the most common:

1. **The basic motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”
2. **The motion to amend.** If a member wants to change a basic motion that is under discussion, he or she would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

- 3. The substitute motion.** If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would “move a substitute motion.” A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.

A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

The decision as to whether a motion is really a motion to amend or a substitute motion is left to the chair. So that if a member makes what that member calls a motion to amend, but the chair determines it is really a substitute motion, the chair's designation governs.

When Multiple Motions Are Before The Governing Body

Up to three motions may be on the floor simultaneously. The chair may reject a fourth motion until the three that are on the floor have been resolved.

When two or three motions are on the floor (after motions and seconds) at the same time, the *first* vote should be on the *last* motion made. So, for example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee, to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows.

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passes*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be complete. No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) *failed*, the chair would proceed to consideration of the second (now the last) motion on the floor, the motion to amend.

If the substitute motion failed, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would now move to consider the main motion (the first motion) as *amended*. If the motion to amend failed, the chair would now move to consider the main motion (the first motion) in its original format, not amended.

The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee) or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are *not* debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess, which may range from a few minutes to an hour. It requires a simple majority vote.

A motion to fix the time to adjourn.

This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to

be placed on "hold." The motion may contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion may contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call for the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second to the motion, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body. Note that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the

the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions occur when the body is taking an action that effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super-majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," "I move the question," "I call for the question" or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body, such as the chair, nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a two-thirds vote to pass.

pend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

First is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted *in the majority* on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body may second the motion). If a member who voted *in the minority* seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If you are running the British Parliament, Robert's Rules of Order is a dandy and quite useful handbook.

motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super-Majority Votes

In a democracy, decisions are made with a simple majority vote. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means

Motion to object to the consideration of a question. Normally, such a motion is unnecessary, because the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to sus-

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. And at the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every

It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus.

lege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "Point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focus on the item and the policy in question, not on the personalities of the members of the body. Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body. Can a member of the body interrupt the speaker? The general rule is no. There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "Point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privi-

lege relate to anything that would not be considered appropriate conduct of the meeting; for example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Special Notes About Public Input

The rules outlined here help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

Public input is essential to a healthy democracy, and community participation in public meetings is an important element of that input. The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items. The rules presented here for conducting a meeting are offered as tools for effective leadership and as a means of developing sound public policy. ■

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