

CITY OF NOVATO



POLICE ADVISORY AND REVIEW BOARD HANDBOOK

CITY OF NOVATO



POLICE ADVISORY AND REVIEW BOARD

HANDBOOK

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City Offices and Departments

Central Administration

899-8900

City Council, City Manager, City Clerk, Redevelopment Agency
75 Rowland Way, 2nd Floor, Novato, CA 94945

Administrative Services

899-8900

Human Resources 75 Rowland Way, 2nd Floor
Finance, Information Technology 75 Rowland Way, 2nd Floor

Community Development

899-8989

Planning, Building, Engineering 75 Rowland Way, 1st Floor
Maintenance 550 Davidson Avenue

Parks, Recreation & Community Services

899-8200

Classes, Athletics, Cultural Arts 75 Rowland Way, 2nd Floor
Youth and Family Services 75 Rowland Way, 2nd Floor
Margaret Todd Senior Center 1560 Hill Road
Teen/Gymnastics Center 950 Seventh Street

Police

897-4361

909 Machin Avenue

City Office Hours

Most City offices are open 9:00 a.m. to 5:00 p.m. Monday through Friday.

The Finance Division is open 8:30 a.m. to 4:30 p.m.

The Police Department Lobby Hours:

Mondays – 8:00 a.m. to 6:00 p.m.

Tuesday, Wednesday and Thursday 8:00 a.m. to 7:00 p.m.

Saturday and Sunday - Closed

City offices are closed every other Friday.

**CITY OF NOVATO
COUNCIL APPOINTED COMMISSION, COMMITTEES & BOARDS
(WITH EXPIRING TERMS)**

Board	City Council Authorization	No. of Members	Tenure	Date of Meetings	Responsibility
Planning Commission	Code Section 2-10.1 through 2-10.5 (1960)	7	2 years expires 4/15	2 nd & 4 th Monday 7:30 p.m.	Exercise its powers and duties per Sections 2-10.4 & .5 of the Code which includes maintenance of the General Plan, review of subdivisions of land, review zoning plan, recommend or disapprove any proposed changes and acts in an advisory capacity on planning issues. <i>(Members must live within City limits.)</i>
Design Review Committee	Code Section 2-11 (1974)	5 (+2 Alternates)	2 years expires 4/15	1 st & 3 rd Wednesday 7:30 p.m.	Exercise its powers and duties per Section 2-11.5 which includes reviewing design of physical development within the City and acts in an advisory capacity on design issues. <i>(Members must either live or work within City limits.)</i>
Parks & Recreation Commission	Code Section 2-14 (1961)	7	2 years expires 4/15	2 nd Thursday 7:30 p.m.	Act in an advisory capacity in all matters pertaining to the public parks and recreation and exercise other duties and responsibilities per Section 2-14.5 of the Code. <i>(Five members shall be residents within City limits. One member shall be age 50 or over and one members shall be 18 or under.)</i>
Police Advisory and Review Board	Resolution 61-97 (9/1/92)	5	2 years expires 4/15	1 st Thursday 7:00 p.m.	Provide for community participation in Police Department policies, procedures, and practices and review citizens complaints referred by the City Manager. <i>(Members must live within City limits and will be subject to background check.)</i>
Civic Arts Commission	Resolution 71-98 (1973)	9	2 years expires 4/15	1 st Thursday 7:00 p.m.	Serve in an advisory capacity to Council on issues related to the arts and cultural activities in the Novato community. <i>(Members must live within City limits.)</i>
Novato Economic Development Commission	Resolution 23-00 (4/9/96)	9	2 years expires 4/15	3 rd Thursday 7:00 p.m.	Support economic vitality and development and make recommendations on the Economic Development Master Plan and its implementation. <i>(Members must either live or work within City limits.)</i>
Novato Housing and Services Commission	Resolution 20-00 (11/28/95)	9	2 years expires 4/15	3 rd Thursday 7:00 p.m.	Investigate and make recommendations on programs addressing homeless, transitional and affordable housing facilities and services. <i>(Members must either live or work within City limits.)</i>
Citizens Telecommunications Advisory Committee	Resolutions 88-99 (6/20/94)	9	2 years expires 4/15	2 nd Monday 7:00 p.m.	Investigate and advise the City Council on cable television and other telecommunications matters. <i>(Seven members must live within City limit and two may live in the Novato unincorporated area.)</i>

Board	City Council Authorization	No. of Members	Tenure	Date of Meetings	Responsibility
Commission on Drugs & Alcohol	Resolutions 14-00 (12/1/87)	9	3 years expires 4/15	3 rd Wednesday 6:30 p.m.	Recommend solutions for preventing alcohol and drug abuse in the community. <i>(Five members must live within the Novato Fire Protection District and four members must either live within City limits or work within the Novato Fire Protection District.)</i>
Multi-Cultural Oversight Committee	Resolution 8-00 (1/25/00)	7	2 years expires 4/15	3 rd Thursday 7:00 p.m.	Promotes diversity and acts as the Hate Violence Response Team, recommend measures for the prevention of hate violence in the community and seek to create a similar response throughout Marin County. (Members must either live or work within City limits.)
Bicycle/Pedestrian Advisory Committee	Resolution 103-95 (9/26/95)	7	Automatic Reappointment	No set date Usually monthly	Advise Council on capital improvement projects proposed for categorical bike/pedestrian funding and provide general input on Bike/Pedestrian Program <i>(Five members must live within the City limits and two members may live within the Novato unincorporated area.)</i>
Streetscape Maintenance Coalition Advisory Committee	Resolutions 122-94 & 119-96 (10/25/94)	No limit	Automatic Reappointment	No set date	Develop recommendations to the City Council for policy actions that are budgetarily achievable and which will stabilize high-quality streetscape maintenance in Novato, and directly communicate with businesses and citizens to help implement volunteer maintenance work and donations for maintenance purposes.
Down Town Commission	Resolution 35-72 (5/9/72)	9	2 years expires 6/30	3 rd Wednesday	Focus primarily on the new Downtown Teen Center, scheduled to open in the summer of 1999, temporary skate park, special teen events, and teen dances and outings.

CITY OF NOVATO
 CITY COUNCIL/REDEVELOPMENT AGENCY
 COUNCIL APPOINTED COMMISSIONS AND BOARDS ROSTER

Name	Term Expires	Home/Business	City, State, Zip	Home	Work
CITY COUNCIL/REDEVELOPMENT AGENCY/NOVATO PUBLIC FINANCE AUTHORITY (2nd and 4th Tuesdays, 6:30 p.m.) (Staff: Daniel Keen, Shirley Greimels)					
Bernie Meyers, Mayor	November 2005	155 Montura Way	Novato, CA 94949	883-9476	
Carole Dillon-Knutson, Mayor Pro Tem	November 2007	424 San Carlos Way	Novato, CA 94945	897-4459	
Judy Arnold	November 2007	465 Ridge Road	Novato, CA 94947	892-4258	479-6612
Pat Eklund	November 2005	36 White Oak Way	Novato, CA 94949	883-9116	
Jeanne MacLeamy	November 2007	95 Alameda del Prado	Novato, CA 94949	883-8182	883-7781
PLANNING COMMISSION (1st and 3rd Mondays, 7:30 p.m.) (CODE SECTION 2-10.1) (Staff: David Wallace)					
Calvin Wilhite, Chair	April 15, 2006	99 Newport Landing Drive	Novato, CA 94949	884-2448	510-540-3766
Madeline Kellner, Vice Chair	April 15, 2007	10 Andreas Court	Novato, CA 94945	892-7151	897-9440
Bob B. Hart	April 15, 2007	43 Dorothy Way	Novato, CA 94945	893-1330	897-4400
Marie K. Hoch	April 15, 2006	14 Richardson Road	Novato, CA 94949	884-9336	884-9336
Maximilian Hopkins	April 15, 2007	7665 Redwood Blvd, Ste 200	Novato, CA 94945	898-7131	893-1200 ext 29
Jim Leland	April 15, 2007	115 Emerson Avenue	Novato, CA 94949	883-5567	925-3215
Peter Tiernan	April 15, 2006	53 Queva Vista	Novato, CA 94947	897-0429	707-526-4825
DESIGN REVIEW COMMITTEE (1st and 3rd Wednesdays, 7:30 p.m.) (CODE SECTION 2-11) (Staff: David Wallace)					
Patrick MacLeamy, Chair	April 15, 2006	95 Alameda del Prado	Novato, CA 94949	883-8182	356-8500
Beth Swenson Radovanovich, Vice Chair	April 15, 2007	106 Red Hawk Road	Novato, CA 94949	382-9621	916-325-1100
Edyie M. Bergeson	April 15, 2006	1 Los Alondros Court	Novato, CA 94947	897-1624	250-0558
Jeff Cavener	April 15, 2007	31 Woodleaf Court	Novato, CA 94945	897-5444	897-5194
William P. Kelly	April 15, 2006	870 Via Escondida	Novato, CA 94949	883-6242	883-5388
Alternate: Judith Swenson	April 15, 2007	122 Chesapeake Lane	Novato, CA 94949	883-1853	883-1853
Alternate: Vacant	April 15, 2007				

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CITY OF NOVATO
 CITY COUNCIL/REDEVELOPMENT AGENCY
 COUNCIL APPOINTED COMMISSIONS AND BOARDS ROSTER

Name	Term Expires	Home/Business	City, State, Zip	Home	Work
PARKS & RECREATION COMMISSION (2nd Thursday, 7:30 p.m.) (CODE SECTION 2-14) (Staff: Larry Dito)					
John Reuscher, Chair	April 15, 2006	P.O. Box 1825	Novato, CA 94948		892-9500
Marilyn Sweeney, Vice Chair	April 15, 2007	580 Canyon Road	Novato, CA 94947	892-6730	444-1230
Howard Blum	April 15, 2007	31 Mendocino Lane	Novato, CA 94947	898-4130	898-4130
Gerald "Craig" Hill	April 15, 2007	1491 Indian Valley Road	Novato, CA 94947	892-8112	506-3403
Clifford M. Parker	April 15, 2006	423 San Marin Drive	Novato, CA 94945	892-5701	
Mary Stompe	April 15, 2007	6 June Lane	Novato, CA 94945	898-1576	(707) 762-2336
Vacant	April 15, 2006				
POLICE ADVISORY AND REVIEW BOARD (Meet as Needed - 1st Thursday, 7:00 p.m.) (Resolution 112-02) (Staff: Mary Neilan)					
Stanley K. Gobbin, Chair	April 15, 2007	2260 Vineyard Road	Novato, CA 94947	892-9859	
Bruce C. Ritter, Vice Chair	April 15, 2006	8 Red Oak Court	Novato, CA 94949	462-1432	479-3525
Otto Dittmann	April 15, 2007	50 Pinto Lane	Novato, CA 94947	892-2563	
Elton J. Landi	April 15, 2006	36 Truman Drive	Novato, CA 94947	897-3303	
Matthew B. Pavone	April 15, 2007	8 Fig Tree Lane	Novato, CA 94947-2916	892-1102	209-9610
James D. Whaley	April 15, 2006	281 San Marin Drive	Novato, CA 94945	897-7790	897-0035
Vacant	April 15, 2006				

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CITY OF NOVATO
 CITY COUNCIL/REDEVELOPMENT AGENCY
 COUNCIL APPOINTED COMMISSIONS AND BOARDS ROSTER

Name	Term Expires	Home/Business	City, State, Zip	Home	Work
ECONOMIC DEVELOPMENT COMMISSION (2nd Thursday, 3:00 p.m.) (Resolution 23-00) (Staff: Ron Gerber)					
John R. Williams, Chair	April 15, 2006	9 Silver Maple Place	Novato, CA 94949	883-0668	897-4422
Cat Gibson	April 15, 2006	155 Wild Horse Valley	Novato, CA 94947	898-2556	209-9600 ext. 300
Gary Gustafson	April 15, 2006	306 Ignacio Valley Circle	Novato, CA 94949	883-0419	460-4213
Ayanna L. Jenkins	April 15, 2007	3 Marblehead Lane	Novato, CA 94949	897-7771	464-4974
Peter Pelham	April 15, 2007	19 Jules Drive	Novato, CA 94945	898-9985	899-7345
John Potocny	April 15, 2006	23 Oak View Court	Novato, CA 94947	883-8578	717-4923
Coy Smith	April 15, 2007	16 Canterbury Court	Petaluma, CA 94954	707-763-1364	897-1164
Gary Campen (Ex-officio)		10 Elizabeth Way	San Rafael, CA 94901	785-3878	302-8845
Bill Hoopes (Ex-officio)		25 Hickox Road	Novato, CA 94947	897-2005	892-7699
Steve Saunders (Ex-officio)		Pini Hardware 1535 South Novato Boulevard	Novato, CA 94947		892-1577
HOUSING & SERVICES COMMISSION (Meet as Needed - 3rd Thursday, 7:00 p.m.) (Res. 77-04) (Staff: Hans Grunt)					
Frank Keenan, Chair	April 15, 2006	17 Pacheco Creek Drive	Novato, CA 94949	883-5729	884-2041
Betty Patocchi, Vice Chair	April 15, 2006	190 Apollo Court	Novato, CA 94947	897-9106	
Elvera Berson	April 15, 2006	111 Portsmouth Drive	Novato, CA 94949	883-5846	883-3773
James Burke Gildea	April 15, 2006	819 Diablo Avenue #32	Novato, CA 94947	892-4383	705-4613
Josh Fryday	April 15, 2007	57 Trish Drive	Novato, CA 94947	898-2716	370-1464
Sue Hunt-Lemay	April 15, 2006	37F Oliva Drive	Novato, CA 94947	898-0492	454-3303
Joe Quigley	April 15, 2007	420 S. Palm Drive, #222	Novato, CA 94949	382-7948	
Evelyn Swenson	April 15, 2007	1509 S. Novato Blvd., Apt. 19	Novato, CA 94947	897-5122	
Vacant	April 15, 2007				

CITY OF NOVATO
 CITY COUNCIL/REDEVELOPMENT AGENCY
 COUNCIL APPOINTED COMMISSIONS AND BOARDS ROSTER

Name	Term Expires	Home/Business	City, State, Zip	Home	Work
CITIZENS BUDGET COMMITTEE (Meet as Needed or Quarterly) (Res. 104-05) (Staff: Mary Neilan and Gwen Wynne)					
Vacant	April 15, 2007				
Vacant	April 15, 2006				
Vacant	April 15, 2007				
Vacant	April 15, 2006				
Vacant	April 15, 2007				
CIVIC ARTS COMMISSION (1st Thursday, 7:00 p.m.) (Res. 9-04) (Staff: Kathy Kormos)					
Kate Ruehle, Chair	April 15, 2006	31 Richardson Road	Novato, CA 94949	382-0616	
Nancy Lee Weber, Vice Chair	April 15, 2006	10 Villa Maria Court	Novato, CA 94947	898-9876	
Sharyn Moss	April 15, 2006	1106 Indian Way	Novato, CA 94949	382-1869	
Vacant	April 15, 2007				
Vacant	April 15, 2007				
COMMISSION ON DRUGS & ALCOHOL (Meet as Needed - 3rd Monday, 7:15 p.m.) (Res. 82-03) (Staff: Lieutenant Laveroni)					
Susan Boccaccio, Chair	April 15, 2008	22 Fleetwood Court	Novato, CA 94947	899-9913	
Joshua Boccaccio, Vice Chair	April 15, 2007	22 Fleetwood Court	Novato, CA 94947	899-9913	
Carole Gathman	April 15, 2007	310 Indian Way	Novato, CA 94949	884-2720	
Mary Musante	April 15, 2007	16 Palomino Road	Novato, CA 94947	892-9044 Fax: 892-1622	897-4206
Alex Peterson	April 15, 2007	180 Apollo Court	Novato, CA 94947	892-0016	
Vacant	April 15, 2006				
Vacant	April 15, 2008				

CITY OF NOVATO
CITY COUNCIL/REDEVELOPMENT AGENCY
COUNCIL APPOINTED COMMISSIONS AND BOARDS ROSTER

Name	Term Expires	Home/Business	City, State, Zip	Home	Work
MULTI-CULTURAL COMMISSION (3rd Thursday, 6:00 p.m.) (Res. 131-01) (Staff: Police Chief Joseph Kreins)					
Kim Tsuchimoto-Evans, Chair	April 15, 2006	167 Michele Circle	Novato, CA 94947	898-0180	506-6725
Jesús N. Alvarez	April 15, 2007	160 Daryl Avenue	Novato, CA 94947	897-3565	510-639-2938
Dolores Caruthers	April 15, 2006	1016 Third St., #3	Novato, CA 94945	898-3434	721-9878
Charles Dennis	April 15, 2006	815 Reichert Avenue	Novato, CA 94945	892-4784	221-6133
Rod Holland	April 15, 2007	680 Olive Avenue	Novato, CA 94945	898-5663	485-9797
Kathleen S. O'Dea	April 15, 2006	2360 Dominic Drive	Novato, CA 94947	897-5583	897-5583
Sara M. Taylor	April 15, 2007	54 Grove Lane	Novato, CA 94947	898-5605	892-8126
COMMUNITY STRATEGIC PLAN OVERSIGHT COMMITTEE (Meet as Needed - 4th Wednesday at 7:00 p.m.) (Res. 136-03) (Staff: Jennifer Goldfinger)					
Madeline R. Kellner, Chair	April 15, 2006	10 Andreas Court	Novato, CA 94945	892-7151	897-9440
Charles Schwarze, Vice Chair	April 15, 2006	56 Clemente Court	Novato, CA 94945	897-7342	893-9811
Denise Athas	April 15, 2006	15 Hickok Road	Novato, CA 94947	897-3536	898-5041
John Schlag	April 15, 2006	1875 Virginia Avenue	Novato, CA 94945	898-2340	902-2819
Eleanor Sluis	April 15, 2007	P.O. Box 240	Novato, CA 94948-0240	892-0128	
Susan Stompe	April 15, 2007	110 San Mateo Way	Novato, CA 94945	897-1610	
Tom Walsh	April 15, 2007	32 Manzano Court	Novato, CA 94945	897-3864	640-4457
STREET IMPROVEMENT OVERSIGHT COMMITTEE (Meet as Needed - 4th Thursday at 12:00 noon) (Res. 11-05) (Staff: Glenn Young)					
Phillip J. Brown, Chair	April 15, 2006	16 Ramona Way	Novato, CA 94945	892-5815	
Dan Jacoby	April 15, 2007	99 Temelec Circle	Sonoma, CA 95476	707-935-8854	
Edward R. Schulze	April 15, 2006	1 Tenaya Lane	Novato, CA 94947	897-8969	
John G. Stuber	April 15, 2006	60 Hickox Road	Novato, CA 94947	892-3916	892-4763
Charlotte Urban	April 15, 2007	140 Cerro Crest Drive	Novato, CA 94945	897-0430	

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CITY OF NOVATO
 CITY COUNCIL/REDEVELOPMENT AGENCY
 COUNCIL APPOINTED COMMISSIONS AND BOARDS ROSTER

Name	Term Expires	Home/Business	City, State, Zip	Home	Work
BICYCLE/PEDESTRIAN ADVISORY COMMITTEE (2nd Wednesdays at 7:00 p.m.) (Res. 179-02 & Minute Action 6/22/04) (Staff: Glenn Young)					
Mark Birnbaum, Chair	April 15, 2007	10 Meadowbrook Court	Novato, CA 94947	898-6515	257-8480, ext. 277
Dan Dawson	April 15, 2006	3 Villa Place	Novato, CA 94945	897-7450	499-6287
Kristin Drumm	April 15, 2006	1733 Center Road	Novato, CA 94947	892-2498	499-6290
Karen Losee	April 15, 2007	5 Corinthian Court	Novato, CA 94947	892-9069	455-9981
Charlotte Moran	April 15, 2007	31 Pinheiro Circle, #G-22	Novato, CA 94947	892-3945	
Sue Potter	April 15, 2006	1101 Second Street	Novato, CA 94945	892-5569	389-5040, ext. 10
Jeff Stevenson, M.D.	April 15, 2006	759 Arlington Circle	Novato, CA 94947	883-9237	725-9082

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CITY OF NOVATO
 CITY COUNCIL/REDEVELOPMENT AGENCY
 COUNCIL APPOINTED COMMISSIONS AND BOARDS ROSTER

Name	Term Expires	Home/Business	City, State, Zip	Home	Work
TRAFFIC SAFETY ADVISORY COMMITTEE (CODE SECTION 18-2.5) (Staff: Steve Wallace)					
Glenn Young, Interim Public Works Director, Chair		City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8962
North Marin PTA Representative		757 Eucalyptus Avenue	Novato, CA 94947		
Forrest Craig, Fire Marshall		Novato Fire Protection District, 7025 Redwood Blvd.	Novato, CA 94945		878-2690
Novato Fire Department - Vacant					
NUSD Administration Representative		NUSD, 819 Olive Avenue	Novato, CA 94945		898-2859
Sandi Paine, Transportation Supervisor		NUSD, 819 Olive Avenue	Novato, CA 94945		892-1598
Traffic Officer (Rotating)		Police Dept., 909 Machin Ave.	Novato, CA 94945		897-4361
Traffic Sergeant		Police Dept., 909 Machin Ave.	Novato, CA 94945		897-4361
UNDERGROUND UTILITIES ADVISORY COMMITTEE (Resolutions 6-68A & 2-69) (Staff: Jerry Novak)					
Jerry Novak, Chair		City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		893-7900
Chris DeGabriele, Manager		Water District, P.O. Box 146	Novato, CA 94948		897-4133
Glenn Young, Interim Public Works Director		City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8962
Steve Dodge, Construction Administrator		Verizon 501 Davidson Street	Novato, CA 94945		892-7236
Rick Gustafson		Comcast 595 Martin Avenue	Rohnert Park, CA 94928		707/584-7410
Al Mello, Battalion Chief		Novato Fire Protection District, 7025 Redwood Blvd.	Novato, CA 94945		892-1513
Coy Wiggins New Business Representative		PG&E, 999 Third Street, POB 2669	San Rafael, CA 94901		257-3338
Debie Barrios, Public Works Coordinator		Pacific Bell, 2125 Occidental Road	Santa Rosa, CA 95401		707/575-2112
Beverly James, Manager		Sanitary District, 500 Davidson Street	Novato, CA 94945		892-1694

CITY OF NOVATO
 CITY COUNCIL/REDEVELOPMENT AGENCY
 COUNCIL APPOINTED COMMISSIONS AND BOARDS ROSTER

Name	Term Expires	Home/Business	City, State, Zip	Home	Work
HOUSING AND BUILDING CODES APPEALS BOARD (CODE SECTION 4-1.5) (Staff: Jack Needling)					
Ron Averiette, Chief Building Official, Ex-Officio		City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8927
Harry Graves, Community Development Director (Ex Officio)		City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8921
George Allen, General Contractor		6 Redbud Court	Novato, CA 94945		897-7200
Ray Bettencourt		1669 Sequoia Drive	Petaluma, CA 94954		707-769-7444
Anthony Eishout, Private Citizen		40 Saint Andrews Drive	Novato, CA 94949	883-4993	883-2380
Irvin Hille, Architect		42 Eagle Drive	Novato, CA 94949	883-6663	
Dietrich Stroeh, CSW/Stuber-Stroeh Eng. Group, Chairman		790 DeLong Avenue, Suite 103	Novato, CA 94945	897-1008	892-4763
ASSESSMENT DISTRICT REVIEW COMMITTEE (Established 6/19/84 by Resolution 74-84) (Staff: Assistant City Manager)					
Daniel Keen, City Manager		City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8905
Harry Graves, Community Development Director		City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8921
Glenn Young, Interim Public Works Director		City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8962
Chris DeGabriele, Manager, North Marin Water District		999 Rush Creek Place	Novato, CA 94945		897-4133
Beverly James, Manager Sanitary District		500 Davidson Street	Novato, CA 94945		892-1694

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CITY OF NOVATO

DEPARTMENT HEADS
 ROSTER

Name	Home/Business	City, State, Zip	Home	Work
DEPARTMENT HEADS				
City Manager - Daniel Keen	City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8905
Assistant City Manager - Mary Neilan	City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8906
City Clerk - Shirley Gremmels	City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8986
Police Chief - Joseph Kreins	Police Dept., 909 Machin Ave.	Novato, CA 94945		897-4361
Community Development Director - Harry Graves	City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8989
Interim Public Works Director - Glenn Young	City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8962
Community Services Director - Larry Dito	City Hall, 75 Rowland Way #200	Novato, CA 94945-5054		899-8200
CITY ATTORNEY				
City Attorney - Jeffrey A. Walter	Walter & Pistole	Sonoma, CA 95476		(707) 996-9690
Assistant City Attorney - Veronica Nebb	670 West Napa Street			FAX:
Assistant City Attorney - Valerie Pistole	Suite F			(707) 996-9603
Assistant City Attorney - John Abaci				
Assistant City Attorney - Wendy Roberts				

CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. 112-02

A RESOLUTION OF THE CITY OF NOVATO AMENDING AND
RESTATING RESOLUTION NO. 61-97 REESTABLISHING AND
CONTINUING A POLICE ADVISORY AND REVIEW BOARD

WHEREAS, the City of Novato created the Police Advisory Review Board by ordinance in August 1992, to advise on Police Department policy and appeals to investigate citizen complaints; and

WHEREAS, the City Council of the City of Novato has determined that in general City Boards and Commissions should be established by resolution, providing more flexibility to change aspects of the enabling legislation and administration of the boards; and

WHEREAS, the reasons and justifications for establishing the Police Advisory and Review Board remain the same as those articulated by the City Council when it adopted the ordinance establishing the Police Advisory and Review Board; and

WHEREAS, by Resolution No. 43-00, the City Council reestablished and continued the Police Advisory and Review Board; and

WHEREAS, the City Council has determined that it is in the best interest of the City to increase the number of Board Members from five to seven.

NOW, THEREFORE, the City Council of the City of Novato does hereby resolve as follows:

Resolution No. 43-10 is hereby amended and restated in its entirety to read as follows:

Police Advisory and Review Board**1. Created and Defined.**

The Novato Police Advisory and Review Board is created and reestablished. The term "Board" shall refer to the Novato Police Advisory and Review Board.

2. Purpose and Objectives.

The General purpose of the Board is to provide for community participation in Police Department policies, procedures and practices. Further, the Board may recommend the establishment of educational police/community relations programs. The Board may, in certain cases, conduct investigations into citizens complaints.

3. Number of Members – Appointment Procedure.

Said Board shall consist of seven members who shall be appointed by the City Council. All members shall be residents of the City of Novato. No officer or employee of the City shall be appointed to the Board. No member of the Board shall receive any compensation for serving on the Board.

4. Term of Office and Filling of Vacancies.

A. The term of each member shall be two years commencing on April 15. Any vacancy occurring during the term of any member shall be filled for the unexpired term in the same manner in which regular appointments are otherwise made.

5. Removal from Office.

Any of the Board members may be removed for any or no reason at any time by majority vote of the City Council. If a member of the Board does not attend three consecutive regular meetings of the Board, unless excused by a majority vote of the Board, his/her membership shall automatically be terminated, and his/her successor shall be appointed by the City Council to serve the remainder of the unexpired term.

6. Officers.

The Board shall elect one of its members as chairperson and one as vice-chairperson, who shall each hold office for one year and until their successors are elected. No officer shall be eligible to immediately succeed himself or herself more than once in the same office. Officers shall be elected no later than the second meeting of the Board following its appointment.

7. Meetings.

- A. The Board shall establish a regular time and place of meeting. Special meetings of the Board may be called by the chairperson or three members in accordance with State law.
- B. A majority of appointed Board members shall constitute a quorum for the transaction of business.
- C. All meetings shall be open to the public in accordance with the Brown Act, except for statutorily authorized closed sessions.

8. Powers and Duties.

The powers and duties of the Board shall be as follows:

- A. To act as a liaison between the community, the Novato Police Department, and the City Council.
- B. To hold hearings and conduct investigations on citizens' complaints concerning specific programs, policies and procedures of the Police Department and to make recommendations concerning these to the Chief of Police.
- C. To make recommendations to the Police Chief regarding programs to encourage preservation of life and property, such as neighborhood watch.
- D. To make recommendations to the Police Chief regarding policies, programs and/or projects that improve delivery of police services to the Novato community.
- E. In making its recommendations to the Police Chief, the Board shall not attempt to direct the method of implementation of any resulting changes to Police Department programs, policies, or procedures.
- F. (1) The Board shall not be entitled to receive, review, copy or investigate citizens' complaints against individual police personnel except as expressly authorized by this resolution.
 - a. If a citizen submits a complaint against individual police personnel directly to a member of the Board or the Board as a whole, the Board member or the Board, as the case may be, shall forward that complaint to the Police Department. The Board may not take any other action, including holding hearings or conducting investigations, with respect to said complaint unless and until the City Manager authorizes such pursuant to the procedures set forth below.
 - b. Monthly, the Police Department shall provide to the Board a summary of the citizen complaints filed against individual police personnel during the immediately preceding 30 days. Said summary shall include: (i) the number of such complaints; (ii) a brief description of the nature of each complaint; (iii) the number of police personnel complained of in each complaint; and (iv) the Department's disposition of each complaint.
 - c. The Board and each member of the Board shall be entitled to review and act upon only those citizen complaints against individual police personnel which the Board is authorized by the City Manager to investigate.
- (2) The Board may initiate an investigation of citizens' complaints against individual police personnel, provided that the Board obtains the authorization

of the City Manager. The City Manager may authorize an investigation of individual police personnel, provided:

- a. A Police Department Internal Affairs investigation has already been completed; and
 - b. The complainant requests an investigation by the Board within thirty days after he or she is notified of the disposition of the Internal Affairs investigation; and
 - c. The City Manager determines that further investigation by the Board would serve the interests of fairness and due process. The City Manager shall provide timely written notice to the complainant of the decision whether to authorize a Board review and the date of any scheduled public meeting before the Board concerning the investigation. In the event that the City Manager determines that further investigation of a citizen's complaint by the Board would not serve the interests described above, the City Manager shall, in writing or in person, so advise the City Council and the Police Advisory and Review Board and in said advisement shall include (i) the name of the complainant, (ii) the nature of the complaint and (iii) the reasons why further investigation was not authorized. Said advisement shall be confidential.
- (3) The Board's investigation shall comply with all Federal, State, and local laws and any binding labor contracts or agreements and shall preserve the privacy of City employees, the confidentiality of their personnel files, the confidentiality of Police Department files, and the confidentiality of other confidential information to the maximum extent permitted by law, including, but not limited to the closing of meetings or portions thereof consistent with applicable provisions of the Brown Act.
 - (4) If, in the furtherance of its investigation, the Board deems it necessary to issue subpoenas for the production of documents or the testimony of uncooperative witnesses, the Board may request the City Council through the City Manager to obtain such documents or testimony through the exercise of its subpoena power.
 - (5) The Board shall suspend any pending investigation if the complainant initiates litigation or files a claim against the City related to the complaint.
 - (6) The Board, at the conclusion of its investigation, shall make a report to the City Manager summarizing its investigation, and making recommendations, if deemed appropriate. The report shall be confidential, except that, subsection (F)(3) above notwithstanding, any recommendations of the Board

concerning discipline will be available to the public upon request. The City Manager shall provide timely written notice of the Board's recommendation, and any action taken thereon, to the complainant. Any action taken in response to said recommendations which involves the discipline of or other action respecting specific police personnel shall be taken, in the first instance, by the appropriate officers of the Police Department and in accordance with applicable MOU's and State and Federal laws.

- (7) Reports and recommendations issued by the Board shall have no *res judicata* effect upon the City and shall not be admissible in evidence for any purpose in any subsequent administrative or court proceeding.
 - (8) No member of the Board shall divulge confidential information, including identities of witnesses and contents of confidential testimony and documents, either during his/her term of office or thereafter. Prior to taking office, each member of the Board shall take an oath to comply with this requirement of confidentiality. Violation of this subdivision unless this is in an ordinance, it cannot be a crime or punished as such and shall be grounds for removal from office by the City Council.
- G. To provide annual summary reports to the City Council on the first regular City Council meeting after July 1 of each year concerning all the activities of the Board during the preceding twelve-month period, including the number, status and kind of all complaints submitted to or investigated by the Board.
- H. Subject to review and approval of the City Council, to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this resolution and its general purposes. The rules, regulations, and procedures shall be printed in English and Spanish and shall be attached to the Police Department's citizen complaint form. Among other matters, the rules, regulations, and procedures shall provide for:
- (1) scheduling of regular Board meetings and notice by publication thereof; and
 - (2) timetables for carrying out the Board's investigatory duties pursuant to Section 8(F).
- I. All actions of the Board shall be conducted so as to be mindful of the public's concern for a well-run and effective Police Department, for a prompt and effective review of any alleged improper action thereby, and in as cost-effective manner as possible.

- J. Conduct business according to its Policy Manual and rules adopted by the City Council.

9. Staffing

- A. All departments of the City, through the offices of the City Manager, shall furnish necessary existing information, data and records, and provide technical assistance and advice as required, within reason, as an aid to the Board in the performance of its designated duties. Privileged and non-relevant confidential information, if included in documents requested by the Board, need not be furnished. The determination of privilege confidentiality and relevance shall be made by the Police Chief in consultation with the City Manager.
- B. The City Manager shall provide or cause to be provided adequate staff and clerical help, and shall maintain files and records for the Board.
- C. The staff person or the City Manager's designee who has been given the principal responsibility to provide assistance to the Board shall be physically present at all Board meetings, including any closed sessions which the Board convenes, provided, however, that said staff person(s) may be excused by the Board from closed sessions of the Board held solely and duly noticed for the purpose of discussing the employment, appointment, evaluation of performance, discipline and/or dismissal of and/or charges or complaints brought against said staff person or designee, in which case the City Manager shall designate some other City employee to be physically present during such closed sessions of the Board; and, provided further, that the Board may excuse any City employee who imposed or recommended the imposition of any discipline on the police personnel about whom the Board convened the closed session.

10. Requirement of Cooperation by the Novato Police Department and all other City Employees and Offices with the Board.

The Novato Police Department and all other City of Novato employees and officials shall, except as expressly prohibited by law and to the extent authorized by the City Manager, respond promptly to any and all reasonable requests for information, for participation in evidentiary hearings, and for access to data and records for the purpose of enabling the Board to carry out its responsibilities under this resolution. The failure by any official or employee of the Novato Police Department or by any other City of Novato employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct. Any confidential information, including any documents pertaining to Internal Affairs complaints or investigations obtained by the Board from the Novato Police Department, shall remain confidential and shall not be disclosed to the public.

- 11. Notwithstanding anything stated to the contrary hereinabove, to the extent that there presently exists or exists in the future any conflict between the provisions of this Resolution

and the City Council and Redevelopment Agency Policy Manual, the provisions of the latter shall control.

12. Severability.

If any provision, clause, sentence or paragraph of this resolution or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

13. Effective Date

This resolution shall take effect immediately.

* * * * *

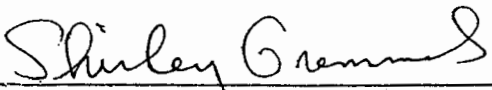
I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting hereof, held on the 15th day of July, 2002, by the following vote, to wit:

AYES: Councilmembers Dillon-Knutson, Eklund, Meyers

NOES: Councilmembers Di Giorgio, Mani

ABSTAIN: Councilmembers None

ABSENT: Councilmembers None



City Clerk of the City of Novato

RULES AND REGULATIONS

OF THE

**NOVATO POLICE ADVISORY
& REVIEW BOARD**

CITY OF NOVATO
 RULES AND REGULATIONS OF
 THE NOVATO POLICE ADVISORY & REVIEW BOARD
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SECTION 1: LEGISLATIVE

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SECTION 1: LEGISLATIVE

1.01 MEETINGS

Policy. The Police Advisory & Review Board shall hold public meetings every first Thursday of the month beginning at 7:00 p.m.

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SECTION 1: LEGISLATIVE

1.02 MEMBER RESPONSIBILITY

Policy. It is the responsibility of the Police Advisory & Review Board to provide for community participation in Police Department Policies, procedures and practices. Further, the Board may recommend the establishment of educational police/community relations programs. The Board may, in certain cases, conduct investigations into citizen complaints.

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SECTION 1: LEGISLATIVE

1.03 OPEN MEETINGS - BROWN ACT

Policy. The Police Advisory & Review Board shall comply with the provisions of the Ralph M. Brown Act, the Open and Public Meeting Law.

Procedure. The following procedure shall be followed:

(a) Posting the Agenda. By Monday before 5:00 p.m., preceding the regular Thursday Police Advisory & Review Board meeting, the Clerk or his/her designee shall post an agenda on the official "City Community Services Bulletin Board" in the Police Station lobby. The agenda will include the following:

- (1) Time and Location.** The time and location of the meeting.
- (2) Description of Agenda Items.** A description of each item of business to be transacted at the Police Advisory & Review Board meeting. The description should be reasonably calculated to adequately inform the public, and should include the contemplated Board action.
- (3) Public Comments Section.** A section providing an opportunity for members of the public to address the Commission. (The public comments portion of the agenda, which is the first item of business at all regular Commission meetings, meets this requirement.)

(b) Affidavit of Posting. The posting of the agenda shall contain a signed affidavit of posting, declaring the time and place where the agenda was posted signed by the Clerk. These affidavits will be filed in the Clerk's office for public reference.

(c) Enforcement. Any violation of the Brown Act should be reported to the Assistant City Manager. The Assistant City Manager will work with the City Attorney to advise a Board Member accordingly.

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SECTION 1: LEGISLATIVE

1.04 MEETING AGENDAS

Background. The Novato City Police Advisory & Review Board meets normally on the first Thursday of every month. The planning, preparation, printing and dissemination of the agenda for these meetings is an ongoing, interdependent activity. A number of timely coordinated actions must be performed on a weekly basis. If problems and delays are to be avoided, all Board Members must adhere to fundamental format and procedure requirements.

Purpose. The purpose of an agenda is to provide a framework within which an open, public meeting can be conducted and to comply with all legal requirements for actions of the Police Advisory & Review Board. An agenda should:

- Set the stage for conducting business;
- Present items or proposals for Board Members to consider matters on which action is required;
- Provide well organized information on which Board Members can base their decisions;
- Facilitate the deliberations and actions of the Board and make it easier for them to conduct the business which has been brought before them;
- Provide guidelines which allow for efficient conduct of meetings; and
- Provide an appropriate means for public comment and inquiry of the Police Advisory & Review Board.

Procedure. The preparation of the Agenda shall be the responsibility of the Clerk, under the direction of the Assistant City Manager and/or designee. The Assistant City Manager and/or designee, Chair, and Vice Chair may meet periodically to review the Commission Tentative Police Advisory & Review Board Agenda Schedule. The Assistant City Manager shall establish, by administrative directive, the procedures, process and format for compiling and distributing the agenda.

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SECTION 1: LEGISLATIVE

(a) **Brown Act Compliance Requirements.** The Police Advisory & Review Board meetings shall comply with the Ralph M. Brown Act and all State or Federal laws affecting the conduct of such meetings.

(b) **Time of Regular Meetings.** The Planning Commission shall hold regular meetings at 7:00 p.m. on the first Thursday of each calendar month at the Police Training Room, 909 Machin Avenue. Closed sessions may be a part of or precede the regular meeting as determined by the Commission Agenda.

(1) **Holidays.** If any regular meeting falls on a public holiday, such meeting shall be held upon the next succeeding Thursday.

(2) **Adjournment, Continuance or Scheduling.** The Police Advisory & Review Board may adjourn or continue regular meetings, schedule workshop meetings, special meetings, special adjourned meetings, or emergency meetings as determined to be needed by the Police Advisory & Review Board or by the Assistant City Manager with concurrence of the Presiding Officer and one other Board Member.

(c) **Scheduling Agenda Items.** The Police Advisory & Review Board, staff, or public may request items to be scheduled on the agenda. The Police Advisory & Review Board, Assistant City Manager, Chief of Police, and City Attorney may place items on the agenda. Requests for agenda items from the public or outside agencies are determined by the Assistant City Manager in consultation with the Chair.

(1) **Written Requests.** Requests must state the subject of the request, who is making the request, what decision is being requested of the Police Advisory & Review Board and any cost associated with the request.

(2) **Time Requirement.** All requests must be delivered to the Clerk on the Thursday by 9:00 a.m., 14 days prior to the Police Advisory & Review Board meeting.

(3) **Determination of Completeness.** The Clerk shall determine the completeness of the request prior to scheduling. The Assistant City Manager shall determine if any staff work is needed prior to scheduling the item on the agenda. If an item is not scheduled for the next agenda, the Clerk shall notify the requester of the reasons for not scheduling.

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(e) **Order of Business on the Agenda.** Regular business of the Board shall be taken up for consideration in substantially the following order, except as may be otherwise ordered by the Board.

(1) **Format of the Agenda.** The approved format includes the following categories:

- A. Closed Session
- B. Approval of Final Agenda
- C. Public Comments
- D. Consent Calendar
- E. Training
- F. Old Business/Requested Reports
- G. New Items
- H. Board Reports
- I. Board and Staff Comments

(2) **Description of Categories.** The following further defines the purpose and subject of the various sections of the agenda:

"A." Closed Session.

"B." Approval of the Final Agenda. The determination that all items to be discussed by the Board during the meeting are listed on the agenda. This is the time to add urgent or emergency items to the agenda in accordance with applicable State laws. Board may also take items out of order or remove items from the Agenda.

"C." Public Comments. The opportunity for members of the public to directly address the Board on items of interest to the public. Testimony on an item listed on the agenda under Hearings shall be reserved for discussion at the time of the hearing. Items brought up during Public Comments can legally have no action. Before any action can be taken, the issue will be referred to the Assistant City

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Manager of Planning or designee for administrative action or scheduled on a subsequent agenda.

“C.” Consent Calendar/Items Removed from the Consent Calendar. Those items on the Board agenda which are considered routine by the Assistant City Manager and Chief of Police, e.g., minutes, and other routine items, are listed on the “Consent Calendar” and will appear in the Board minutes in their proper form (i.e., resolution accepting grant deed or easement, award of bid, etc.). The Consent Calendar is intended to be adopted by one motion and roll call vote.

“D.” Training.

“F.” Old Business/Requested Reports. Agenda items that have been taken up at a previous meeting and continued except for hearing items. In the case of a continued hearing item, it is listed as the first hearing.

“G.” New Items. Agenda items that are new.

“H.” Board Reports.

“I.” Board and Staff Consultants.

(f) Posting the Agenda. For every regular or special meeting, the Clerk or his/her designee shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all the items of business to be discussed at the meeting. The notice and agenda may be combined in a single document. For any regular meeting of the Board, the notice and agenda shall be posted on the official City “Community Services Bulletin Board” in the Police Department building lobby.

(g) Affidavit of Posting. The posting of the notice and agenda by the Clerk, or his/her designee, shall confirm an Affidavit of Posting in a form developed by the Clerk that indicates the date and location of the posting and shall be signed under penalty of perjury.

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(1) Retention of Records. The Clerk shall retain all such affidavits, together with a copy of each notice and agenda so posted in his/her files. The affidavit and agenda (or notice) shall be retained at least two (2) years subsequent to the date of posting and pursuant to Government Code Section 34090, shall not be destroyed by the Clerk thereafter without the written consent of the City Attorney.

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SECTION 1: LEGISLATIVE

1.05 CONDUCT OF MEETINGS

Background. This outline shall establish the procedures for the conduct of all meetings of the Police Advisory & Review Board of the City of Novato. The purpose of this outline is to provide that the City's procedures will be consistent with the Brown Act (Government Code Sections 54950 et seq.) and also to establish procedures which will be convenient for the public and contribute to the orderly conduct of the City's business.

Types of Meetings. The different types of meetings described below are governed by different requirements.

(a) **Regular Meetings.** The Police Advisory & Review Board shall conduct its regular meetings at the time and place established by ordinance. Regular meetings are currently held on the first Thursday of each month at 7:00 p.m. at the Police Training Room.

(b) **Special Meetings.** A special meeting or workshop may be called at any time by the Presiding Officer or by determination of the majority of the Police Advisory & Review Board.

(1) **Written Notice.** Written notice of any such meeting must be given to all members of the Police Advisory & Review Board (unless waived in writing by that member) and to each local newspapers, radio stations, television stations, or other media which have previously requested such notice in writing in accordance with applicable provisions of the Government Code. The notice must in effect constitute the Agenda, stating the time, place and all business to be transacted or discussed unless waived. Such notice may be given either personally or by mail, but must be received at least twenty-four (24) hours before the time set for the special meeting.

(c) **Adjourned Meetings.** The Police Advisory & Review Board may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment.

(1) **Quorum.** If a quorum is not present, less than a quorum may so adjourn.

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(2) **Adjournment by Clerk.** If all members, or a quorum, are absent from any regular or adjourned regular meeting, the Assistant City Manager and/or designee may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be delivered, personally, to each Commissioner at least three (3) hours before the adjourned meeting.

(3) **Posting Notice of Adjournment.** A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held, within twenty-four (24) hours after the time of adjournment. When a regular or adjourned regular meeting is adjourned as provided herein, the resulting adjourned regular meeting shall be a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.

(d) **Special Emergency Meetings.** A special emergency meeting may be called by the Presiding Officer, Assistant City Manager, Chief of Police, or by a majority of the Police Advisory & Review Board where the following exists:

(1) **Special Authority.** Such circumstances specified by State law as authorizing the conduct of an emergency meeting.

Agenda Requirement for Action Taken. No action shall be taken by the Police Advisory & Review Board on any item not appearing on a posted agenda, subject only to the exceptions listed in the subsection below and as otherwise permitted by law. "Action taken," as used herein, shall mean a collective decision made by a majority of the members of the Police Advisory & Review Board, a collective commitment or promise by a majority of the members of the Planning Commission to make a positive or a negative decision, or an actual vote by a majority of the members of the Police Advisory & Review Board upon a motion, proposal, resolution, order or ordinance.

(a) **Non-Agenda Matters Raised During Public Comments.** With regard to matters not on the agenda, the members of the Police Advisory & Review Board may briefly respond to or ask questions of persons who raise such matters during the Public Comment period or otherwise, and the Presiding Officer should handle such matters as provided herein, but such questions should be limited to informational purposes and the Police Advisory & Review Board should avoid

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discussions of the merits or giving directions regarding such subjects except as provided in Section (d) below.

(b) Non-Agenda Matters Raised During Status Reports. With regard to matters raised by members of the Police Advisory & Review Board under Status Reports and Non-Agenda Discussion section of the agenda, such matters should normally be placed on a subsequent agenda and the Presiding Officer should place such matters on a subsequent agenda or refer the matter to staff further investigation without discussion by the Police Advisory & Review Board.

(c) Exceptions to Agenda Requirement for Action Taken. The Police Advisory & Review Board may take action at a meeting on an item not appearing on the agenda for that meeting only under one of the following circumstances:

(1) "Need to Take Action" Arises Subsequent to the Agenda Posting. Upon a determination by a two-thirds (2/3) vote of the Police Advisory & Review Board, or if less than two-thirds (2/3) of the members are present by a unanimous vote of those members present, that the need to take action arose subsequent to the agenda posting. For the purposes of this subsection, the term "need to take action" shall mean those circumstances whose occurrence creates a situation which is materially different from that which existed at the time the agenda was posted, and which requires the immediate attention of the Police Advisory & Review Board.

(2) Documentation of "Need to Take Action." The mere failure of any person to notify the Police Advisory & Review Board or staff of a pre-existing situation requiring Board attention until after the time for the posting of the agenda shall not be deemed to constitute a "need to take action" hereunder. If the Police Advisory & Review Board makes a determination pursuant to this subsection (c.), the minutes of the meeting at which the determination is made shall reflect what circumstances gave rise to the "need to take action" and why the item could be placed on the agenda.

(3) Item on Prior Agenda. The item was properly posted for a prior meeting occurring no more than five calendar days prior to the date action is intended to be taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

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(d) Other Actions Permitted to Be Taken as to Non-Agendized Matters. In addition to the discussions permitted in Subsection 3.03(a) above, Commissioners on their own initiative or in response to questions posed by the public, may take the following actions or make the following statements regarding non-agendized matters:

- (1) Ask questions for clarification;
- (2) Make a brief announcement;
- (3) Make a brief report on his or her own activities;
- (4) Provide a reference to staff or other resources for factual information;
- (5) Request staff to report back to the Council at a subsequent meeting on any matter; and/or
- (6) Take action to direct staff to place a matter on a future agenda.

The Presiding Officer. The meeting shall be presided over and chaired by the Presiding Officer (Chair) or, in the Presiding Officer's absence, the Vice Chair. The Police Advisory & Review Board may, in addition to the rules listed below, refer to Roberts Rules of Order.

(a) Authority to Rule Out of Order. The Presiding Officer shall have the authority to rule any speaker out of order, including speakers during the Public Comment period, if the subject raised is not within the subject matter jurisdiction of the Police Advisory & Review Board, or during a public hearing or a general business item if the speaker is not presenting testimony or evidence relevant to the matter or if the speaker becomes disruptive to the proceedings and conduct of the meeting.

(b) Authority to Conduct Meeting In an Orderly Manner. The Presiding Officer shall have the responsibility for the conduct of meetings in an orderly manner. To prevent the obstruction of business, and in carrying out this responsibility the Presiding Officer shall have the authority to give the floor to any member of the Police Advisory & Review Board or public by recognizing them, to prevent the misuse of legitimate forms of motions or privileges, to take matters up out of order, and to order any persons wilfully interrupting the meeting to be removed from the room.

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(c) Motion to Appeal the Ruling. Any determination made by the Presiding Officer may be appealed by the making of a Motion to Appeal the Ruling by any other member of the Police Advisory & Review Board. The Presiding Officer's determination will stand unless a majority of the Police Advisory & Review Board votes in favor of the Motion to Appeal the Ruling, in which case the ruling of the Presiding Officer will be overridden. The Motion to Appeal the Ruling is debatable, and the Presiding Officer may participate in the debate and the voting on the motion. A vote upon a Motion to Appeal the Ruling is purely a procedural matter and shall not constitute "action taken" on any substantive question.

Parliamentarian. The Assistant City Manager and/or designee or City Attorney shall decide all questions of interpretations of these rules and any other questions of a parliamentary nature which may arise at a Police Advisory & Review Board meeting.

Motions. The following procedures shall apply to making motions:

(a) Obtaining the Floor. Any member of the Police Advisory & Review Board wishing to speak, or any member of the public wishing to address the Police Advisory & Review Board must first obtain the floor by being recognized by the Presiding Officer. The Presiding Officer must recognize any member of the Police Advisory & Review Board who seeks the floor when appropriately entitled to address the Police Advisory & Review Board.

(b) Making a Motion. Any member of the Police Advisory & Review Board, including the Presiding Officer, may bring a matter of business properly before the Police Advisory & Review Board by making a motion. Any member, including the Presiding Officer, except the member making the motion, may second a motion. Once a motion is seconded, it shall be re-stated by the Presiding Officer and opened for discussion and debate.

(c) Motion to Call the Question. After a full opportunity for debate, any member of the Police Advisory & Review Board may call for a vote by a Motion to Call the Question.

(1) Consensus of Opinion. If it appears that there is a consensus of opinion among the members of the Police Advisory & Review Board on the matter to be voted upon, the Presiding Officer may state the consensus of the Police Advisory & Review Board and ask if there is any objection.

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If there is no objection, the consensus as so stated shall become the order of the Police Advisory & Review Board.

(2) No Consensus of Opinion. Otherwise, all votes of the Police Advisory & Review Board shall be by voice vote.

(3) Declaration of Result. After every vote the Presiding Officer shall declare the result and on all but consensus votes, shall note, for the record, the number of votes for or against the question.

(d) Related Motions. Once a main motion is properly brought before the Police Advisory & Review Board and seconded, related motions may be employed in addressing the main motion.

(1) Form and Precedence. These motions take precedence over the main motion and, if properly made and seconded, must be resolved before the main motion can be acted upon. If a main motion is pending, no related motion except as stated below, may be made and any such motion may be declared out of order by the Presiding Officer.

(2) Categories of Related Motions. Related motions fall into two categories: Subsidiary Motions and Motions of Privilege, Order, or Convenience. Despite the pendency of a main motion or a Subsidiary Motion thereto, any member of the Planning Commission or the presiding Officer may make a Motion of Privilege, Order, or Convenience, which once made takes precedence.

Public Comments Section. Every agenda posted for any regular or special meeting shall contain a Public Comments section for the public to address the Police Advisory & Review Board on items on the agenda or on items of public interest within the Police Advisory & Review Board's subject matter jurisdiction. At every special meeting the agenda shall provide the public with an opportunity to address the Board on any item described in the notice and agenda before or during the Board's consideration of that item. The special meeting shall describe the public's right to so comment.

(a) Speaker Information and Time Limitations. Upon addressing the Police Advisory & Review Board, each speaker must first state his/her name and address and then identify the subject(s) upon which she/he intends to speak. A three-minute time limit is normal and may be enforced by the presiding officer.

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(b) Response to Speaker's Comments. At the close of the speaker's comments, the Presiding Officer or Board may ask staff to respond to the speaker's comments. Thereafter, the Presiding Officer shall make one of the following three determinations: the subject(s) raised do not require investigation or response; the subject(s) raised should be referred to staff for investigation and/or response; or the subject(s) raised should be placed on the agenda of a future meeting for action by the Police Advisory & Review Board

Public Comment on Other Agenda Matters. In addition to receiving comment from the public during the Public Comment period, the Presiding Officer shall have the discretion to recognize persons from the audience who wish to address the Police Advisory & Review Board on a particular agenda item, at the time that item is considered by the Police Advisory & Review Board.

Reconsideration of a Board Action. Any member who voted with the majority may move a reconsideration of any action at the same (or "have entered on the minutes" for vote at the next succeeding) meeting. After a motion for reconsideration has once been acted on, no other motion for a consideration therefor shall be made without unanimous consent.

Personal Privilege. The right of any Board Member to address the Board on a question of personal privilege shall be limited to cases in which his/her integrity, character or motives are questioned, or to where the welfare of the Board is concerned. A Board Member wishing to invoke a personal privilege must state the basis therefor and once doing so may interrupt another speaker if the Presiding Officer recognizes the "privilege."

Interpretation of Policy. This policy shall be liberally construed to effectuate its purpose and no ordinances, resolutions, proceedings, or other actions of the Police Advisory & Review Board shall be invalidated or the legality thereof otherwise affected by any failure or omission of the Board to comply with, observe, or follow the rules and procedures stated in this Policy Manual.

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**1.06 PREPARATION OF POLICE ADVISORY & REVIEW BOARD
MEETING MINUTES**

Introduction. The minutes are the concern of the Clerk until presented to the Board for approval; the Commission may then, by motion, make such corrections as conform to fact.

- (a) **Form and Content.** The minutes should be a clear and concise statement of the Board actions, including the motions made and the vote thereon. Except as provided in paragraph (b), reasons for making a motion, Commission debate, and audience reaction are usually irrelevant and may be included or omitted as the Clerk and/or Commission may choose.

Standard Format. The Clerk will use a standardized format for minutes to ensure uniformity of minute entries and to save time in composing the record.

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1.07 ELECTION OF THE CHAIR AND DUTIES

Election and Term of Office. All seven (7) members of the Police Advisory & Review Board are appointed to two (2) year terms. The Chair is elected by the Board during reorganization for a one (1) year term. The Chair can be changed at any time through a majority vote of the Commission. The Chair remains as one member of the Police Advisory & Review Board and has no rights or authority different from any other member of the commission. Any single member of such Commission, Board, and Committee will serve as Chair only once in a three-year cycle.

Duties and Responsibilities of the Chair. The duties and responsibilities of the Chair are as follows:

- (a) **Presiding Officer.** Acts as presiding officer at all Planning Commission meetings, assuring the meetings are conducted in an orderly manner and in accordance with legal requirements.
- (b) **Ceremonial Head or Representative.** Acts as the ceremonial head or representative of the Board at various civic affairs.
- (c) **Spokesperson for the Board.** Acts as spokesperson for the Commission when appropriate media or external organization requests are made and will represent the Board's official position.

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1.08 ELECTION OF THE VICE CHAIR AND DUTIES

Election and Term of Office. The Vice Chair is elected by the Board during reorganization for a one (1) year term. The Vice Chair can be changed at any time through a majority vote of the Commission.

Duties and Responsibilities of the Vice Chair. The duties and responsibilities of the Vice Chair are as follows:

- (a) **Presiding Officer In the Chair's Absence.** In the Chair's absence, acts as the presiding officer at all Police Advisory & Review Board meetings assuring all meetings are conducted in an orderly manner, and in accordance with legal requirements.
- (b) **Ceremonial Head In the Chair's Absence.** In the Chair's absence, acts as the ceremonial head or representative of the Board at various civic affairs.
- (c) **Spokesperson for the Board In the Chair's Absence.** In the Chair's absence, acts as spokesperson for the Commission when appropriate media or external organization requests are made and will represent the Board's official position.

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1.09 COMMISSION AD HOC SUBCOMMITTEES

Establishment of Ad Hoc Subcommittees. The City Council may establish an Ad Hoc Subcommittee of the Police Advisory & Review Board for policy review of a specific area or a specific issue.

(a) **Membership.** The subcommittee shall be either one or two members of the Commission.

(b) **Responsibilities.** These subcommittees shall deal solely with policy issues and not administration.

(c) **Staff Involvement.** The subcommittees may request information from the City staff but shall not direct staff in the performance of their duties or in their recommendations to the Police Advisory & Review Board. All staff involvement with a committee shall be subject to the approval of the Assistant City Manager or Chief of Police so as not to unduly interfere with day-to-day operations or priorities established for the Department by the Council. Board Members will receive a calendar of scheduled meetings of the Ad Hoc Subcommittees.

(d) **Staff Support.** The substantial use of staff or work not provided in work plans of Council's Goals and Projects must be approved by the City Council.

Procedure for Making Appointments to Ad Hoc Subcommittees. Ad Hoc Subcommittees shall be appointed at the time of need and shall have a specific program of work to perform with a specific date for conclusion of one ad hoc committee. Board staff will forward the determination to create an ad hoc committee to the City Council for their concurrence.

Notice of Ad Hoc Subcommittee Meetings. At the time an Ad Hoc Subcommittee is created or members are appointed to it, the Board shall determine whether the subcommittee's meetings may be attended by other, non-committee Police Advisory & Review Board members. If the Board determines all of said subcommittee meetings may be attended by all Board Members, then said subcommittee's meetings shall be noticed as meetings of the entire Board. If the Police Advisory & Review Board makes no such determination at the time a subcommittee is created, members are appointed to it or at any other time, it shall be left to the sole discretion of the subcommittee members as to whether and under what circumstances the subcommittee's meetings are noticed as a

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meeting of the Board as a whole. If an ad hoc subcommittee's meeting is not noticed as a member of the entire Board, no Board Members, except those appointed to the subcommittee, may attend said meeting.

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1.10 PROCEDURE FOR FILLING VACANT
POLICE ADVISORY & REVIEW BOARD POSITIONS

Procedure for Filling a Vacant Board Seat. The City Council will appoint a person to fill a vacated seat. A person appointed by the Council to fill the vacancy shall hold office until the date of the regular appointment.

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**1.11 RULES OF CONDUCT FOR POLICE ADVISORY
& REVIEW BOARD**

The following are the guidelines for the general conduct of Police Advisory & Review Board in the course of City business:

Commission Conduct. No member of the Board shall act in such a manner as to call into disrepute the public image of the Board or which is discourteous to or results in the constant interruption of other members of the Board or members of the public. Board Members are appointed by the City Council to serve as representatives of all of the people.

- (a) The responsibility of making decisions is not easy nor without its problems, but it is the responsibility of Board Members to vote and decide issues, regardless of personal hesitation. There will always be segments of the population dissatisfied with any decision. The purpose of government is to balance legally, fairly, and without favor the limitations, restrictions, or losses that are to be placed upon the individual or several individuals against the good, the benefit, or welfare of or to a majority of the people.

Police Advisory & Review Board Correspondence. Board correspondence shall be handled in the following manner:

- (a) **General Correspondence.** The Assistant City Manager and Chief of Police shall respond to or request staff to respond to correspondence from the public to Board and provide copies of such correspondence to Board Members and appropriate staff. Staff will not respond to junk mail, surveys not truly benefitting the City, letters or form letters stating positions or mail-in campaigns. Board Members responding on their own behalf will use their personal stationery. City stationery may be used for accepting invitations, thank you's or expressions of appreciation.
- (b) **Invitations.** With respect to correspondence that consists of invitations to events, the Chair and Board Members may coordinate reservations or responses with the Clerk.
- (c) **Correspondence to Individual Board Members.** Correspondence addressed to specific Board members or the Chair will be copied to all Board Members.

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Commission Calendar. The responsibility for managing the calendars of the Police Advisory & Review Board meetings shall be delegated to the Assistant City Manager or designee.

Board Travel and Meeting Policy. The Assistant City Manager shall provide an annual budget for anticipated travel. Commissioners shall submit receipts to the Clerk for City travel and meeting expenses. A copy of the reimbursement form will be provided to the Board. Travel and meeting expenses reimbursed by other agencies are not subject to reimbursement by the City.

Commission Communication With Staff. The Board Members shall request information or give direction only to the Assistant City Manager or Chief of Police provided, however, that requests for general information not involving research or analytical work requiring more than 20 minutes' time and that can be orally provided or photocopied may be made to and responded by other City staff. Requests which involve Council policy, expenditure of funds, research or analytical work, or use of more than one hour of total Staff time shall be submitted to the City Council for approval. To avoid misdirection of requests and inefficient use of Staff time, Board Members should submit their request to the Assistant City Manager or Chief of Police rather than any other staff members.

(a) Information Requests Copied to All Board Members. All requests for information by and responses to individual Board Members shall be copied to all Board Members so they all have the same information from which to form judgments or decisions.

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2.01 BOARD STAFF DUTIES

Duties of the Assistant City Manager. The Assistant City Manager shall plan and direct the work of the _____

Duties of the Chief of Police.

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2.02 CITY ATTORNEY'S DUTIES

City Attorney's Duties. The City Attorney will attend Police Advisory & Review Board meetings when the Board may need legal counsel or advice. He/she attends Police Advisory & Review Board meetings as requested by the Assistant City Manager as directed by the City Council or and City Manager. The Assistant City Manager, Chair, and Vice Chair will consider when the City Attorney's presence may be required when reviewing the tentative Police Advisory & Review Board agenda.

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2.03 PRESS RELATIONS

Official Position of the City. In responding to inquiries from the media, the Board and staff shall represent the official position of the City and shall limit their comments to stating the facts and circumstances, without personal opinions or conclusions.

Commissioners Speaking on Their Own Behalf. If Board Members respond outside the above policy, they must clearly identify that they are responding on their own behalf and do not represent the City or the Board in their comments.

Staff Communication to City Manager. All staff members responding to the media shall advise the City Manager of the nature of the inquiry and their response.

Assistant City Manager, Chief of Police Communication to Police Advisory & Review Board. The Assistant City Manager and Chief of Police shall keep the Board informed and provide to the extent practicable any information to the Board on major issues that the Assistant City Manager and Chief of Police believe are controversial or on issues that may cause controversy, concern or confusion, prior to giving the information to the media.

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2.04 USE OF CITY PERSONNEL

Introduction. The City has a great many complex services, programs and projects being carried out at the direction of the City Council. The orderly management and control of these programs, and projects is essential to the effective and efficient accomplishment of these efforts. The City Council's role is to provide policy direction and the City Manager is to organize and carry out the policies. Effective management and control requires the City Council and professional staff to maintain their needed role. The following rules and procedures are designed to help assure the direction and efficiency of City operations.

Non-City Business. Use of City personnel for any personal use or personal business activity not related to City business is prohibited.

Staff Use Authorization. The use of City personnel for related outside City activities, such as community groups, by an individual Board Members shall be considered by the full Commission and recommended to the City Council for authorization.

Individual Board Member Request. The use of City staff for individual Board Members' request for any purpose that exceeds more than 30 minutes of total staff time must be approved by the majority vote of the full Board. The individual Board Member may make their request orally or in writing to the Assistant City Manager. The Assistant City Manager shall provide an estimate of the cost and how the request affects Council's Goals and Projects. This request will then be placed on a Police Advisory & Review Board agenda through the normal process for the Police Advisory & Review Board's consideration and action and, if recommended for approval, forwarded to the City Council for authorization.

Distribution of Information. It is essential every member of the Police Advisory & Review Board has the same information from which to form decisions and actions. Any information distributed to one Board Member shall also be distributed to all Board Members. Thick documents may be referenced by a memo from the Clerk and made available upon request. The documents will be kept in a centralized location in the Clerk's office.

Interaction of Police Advisory & Review Board with Staff. The Board Members are to work through the Assistant City Manager or Chief of Police on all issues, concerns and questions. This is to allow the senior professional staff, with the proper education, training, experience and knowledge of the issues, laws and City Council's policies to coordinate a full and complete response and reduce error or misunderstanding by staff members not

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necessarily knowledgeable on all issues. This can provide a better overall response, allow any new issues to properly be considered and avoid unintended redirection of staff efforts.

Police Advisory & Review Board Business. All communication with the Police Advisory & Review Board or individual Board Members shall be considered the business of the Police Advisory & Review Board. The Board will receive copies of all such communication and any response should be the response of the Police Advisory & Review Board. Any response by an individual Board Member shall be identified as an individual response and not reflective of any position of the City or the Police Advisory & Review Board.

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2.06 PRIORITY OF RESOURCES

Priority of Resources. To assure the health and safety of the public, compliance with Federal, State and local laws, adherence with the adopted budget, goals and objectives of the Council and provide for the orderly, effective and efficient management of the City and its resources establishes the following order of priorities for the commitment of City time and business is established:

- (a) **Legally Mandated Programs.** Perform all legally mandated programs, projects and services as are established by Federal, State or local law.
- (b) **Essential Public Safety Administration.** Provide essential services such as police, road repair, flood protection and building safety. Comply with all adopted rules, regulations, contracts or agreements. Provide for the necessary administration of these programs such as personnel administration, financial accountability and public records.
- (c) **Day-to-Day Operations.** Respond to basic day-to-day operation requirements such as answering phones, staffing counters, responding to correspondence and working with outside agencies. Process and respond to applications for permits and services.
- (d) **General Services, Goals and Objectives.** Carry out the general services, goals and objectives approved with the City budget.
- (e) **Special Services and Projects.** Respond to requests for services and projects by the public/City Council, individual Councilmembers, Boards and Commissions, outside agencies and internal staff requests.

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2.07 ORIENTATION AND TRAINING

City Responsibility. The Assistant City Manager and Chief of Police are responsible for providing a complete orientation to newly appointed Board Members. The orientation will include all documents needed by a new Board Member as well as verbal information.

The City will provide a training seminar for a newly elected Chair and Vice Chair on the Brown Act, parliamentary procedure, conducting an effective meeting, familiarization with Police Advisory & Review Board rules and regulations, and best practices.

Staff will provide information to Board Members on training provided by outside organizations.

Citizen's Complaint



**In the Interest of Professional
Law Enforcement
the
NOVATO POLICE DEPARTMENT
Welcomes Your Complaints and
Constructive Criticism**

Citizen's Complaint



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THE CITY OF
NOVATO
CALIFORNIA

Police Department
909 Machin Avenue
Novato, CA 94945-3242
415/897-4361
FAX 415/898-5344
www.ci.novato.ca.us

Mayor
Bernard H. Meyers
Mayor Pro Tem
Carole Dillon-Knutson
Councilmembers
Judy Arnold
Pat Eklund
Jeanne MacLeamy

City Manager
Daniel E. Keen

TO THE CITIZENS OF NOVATO:

As your Chief of Police, I wish to emphasize that a relationship of trust and confidence between members of the Police Department and the community we serve is essential to effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a reasonable, lawful and impartial manner without fear of reprisal. So, too, enforcers of the law have a special obligation to respect the rights of all persons.

The Novato Police Department acknowledges its responsibility to establish a system of complaints and disciplinary procedures which not only will subject personnel to corrective action when appropriate, but also will protect personnel from unwarranted criticism during the proper discharge of their duties.

I invite your suggestions for methods of improving police services, through constructive criticism of the Department's procedures, comments indicating dissatisfaction with manner of performance, or information concerning commendable actions by Police Department employees. It is the purpose of these procedures to provide a prompt, just, open and expeditious disposition of the complaints regarding the conduct of members and employees of the Department. To this end, citizens are encouraged to bring complaints about Department operations and conduct of its members to the attention of the Novato Police Department, whenever a citizen believes that an improper act has taken place.

Citizens are also encouraged to compliment our procedures and members of our Department when their actions warrant commendations. Any commendation of the actions of our personnel will result in appropriate recognition. Please note that it is not necessary to be a Citizen of the United States, nor a legal resident, in order to make a complaint or comment about Police Department personnel.

Complaints against Department personnel will be handled in a prompt and unbiased manner. Every complaint will be investigated and reduced to a written report, stating the facts surrounding it. It will include a conclusion and a recommendation concerning appropriate action to be taken. All completed investigations are sent to the Chief of Police, who reviews the complaints and makes a final decision.

If, after being notified of the results of the investigation, you are not satisfied, the matter may be appealed to the City Manager. The City Manager, after reviewing the complaint, may forward the complaint to the Police Advisory and Review Board for further review or investigation. (Novato City Resolution 43-00).

It is my experience that citizens usually have a number of questions concerning the filing of a Citizen Complaint. Some of the most commonly asked questions regarding these procedures are addressed on the reverse side of this letter. Should you have any concerns or desire additional information, please contact my office.

Sincerely,

Joseph M. Kreins
Chief of Police

DOES THIS MEAN THAT THE POLICE DEPARTMENT LIKES COMPLAINTS?

Of course not. A complaint may mean that someone is not performing their duties in an acceptable manner. However, if we are to continue to improve our service to you, we must know where we need improvement.

DO YOU HAVE TO COMPLAIN IN PERSON?

No. We would prefer to talk to you in person, but we will accept a complaint by telephone or letter. If you wish to remain anonymous, you may still file a complaint. However, we will not be able to respond back to you directly, nor will we be able to clarify any conflicting information given to us. We encourage you to utilize the Citizen Complaint Form that is provided in order that we may conduct as professional an investigation as possible.

WHO WILL INVESTIGATE YOUR COMPLAINT?

Generally, your complaint will be investigated by the accused person's commanding officer. Under special circumstances it may be assigned to a special investigator.

DO JUVENILES HAVE THE RIGHT TO FILE A COMPLAINT?

Yes. If you are under 18-years-of-age you may still file a complaint, although we would prefer that you bring a parent or guardian with you. We also will require your parent or legal guardian to sign the Citizen Complaint Form.

DO I HAVE TO BE A LEGAL RESIDENT OR CITIZEN OF THE UNITED STATES TO FILE A COMPLAINT?

No. You do not have to be a legal resident or citizen of the United States in order to file a complaint.

WHAT WILL HAPPEN TO THE OFFICER/EMPLOYEE?

That will depend on what the officer/employee did. It will also depend on the individual officer/employee's record. If the actions were criminal, the officer/employee will be dealt with like any other citizen. If the actions were improper, but not criminal, the officer/employee will be given corrective counseling or discipline by his/her superiors.

WILL A CITIZEN COMPLAINT INVESTIGATION AFFECT ANY OTHER PROCEEDINGS?

Traffic citations or arrest charges will not be dismissed because of a personnel complaint investigation, unless the investigation conclusively proves that no basis for citation or arrest can be established.

WILL THE POLICE CHIEF KNOW ABOUT THE COMPLAINT?

Yes. The Police Chief receives all of the complaints against the officers and ultimately reviews the investigation conducted into the citizen complaint.

WILL I FIND OUT THE RESULTS OF THE INVESTIGATION AND WHAT ACTION IS TAKEN AGAINST THE OFFICER?

You will find out the disposition of the complaint (sustained, not sustained, exonerated, or unfounded). The action taken against the police officer is confidential and may not be disclosed.

TO WHOM SHOULD THE COMPLAINT BE REPORTED?

Complaints may be filed in person with the Watch Commander or the complained of person's supervisor at the Novato Police Department. If you do not wish to file your complaint in person, you may telephone or mail your complaint to the following:

**Novato Police Department
Office of the Chief of Police
909 Machin Avenue
Novato, CA 94945
Telephone 897-4361**

CITIZEN'S COMPLAINT

NAME _____ AGE _____
Street & Number _____ City _____
Residence Phone _____ Business Phone _____
Best Time to Contact _____
Nature of Complaint _____
Date of Occurrence _____ Day of Week _____ Time _____
Location of Incident(s) _____
Police Employee(s) Subject to Complaint _____

Details of Incident _____

I affirm that the statements contained herein are, to the best of my knowledge, factual and accurate.
I affirm that I have read the following statement.

You have the right to make a complaint against a police officer for any improper police misconduct. California law requires this agency to have a procedure to investigate citizen's complaints. You have a right to a written description of this procedure. This agency may find that after investigation that there is not enough evidence to warrant action on your complaint. Even if that is the case, you have the right to make a complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.

I have read and understood the above statement.

Signature of: Complainant _____ Date _____
Signature of Parent/Guardian (if you are under 18 years of age.)

Person Receiving Complaint _____ Date _____

Review by Chief of Police _____ Date _____

Assigned to: _____ Complaint No.: _____ Date _____

NPD Complaint No.

CITIZEN'S COMPLAINT

NAME _____

Details of Incident Continuation _____

Signature of: Complainant(s) _____ Date _____

Review by Chief of Police _____ Date _____

Assigned to: _____ Date _____

RECLAMACION DE CIUDADANO



EN EL INTERES DEL CUMPLIMIENTO
PROFESIONAL DE LA LEY

EL DEPARTAMENTO DE POLICIA DE NOVATO

ACEPTAN SUS CRITICAS CONSTRUCTIVAS
Y SUS RECLAMACIONES



THE CITY OF
NOVATO
CALIFORNIA

Police Department
909 Machin Avenue
Novato, CA 94945-3242
415/897-4361
FAX 415/898-5344
www.ci.novato.ca.us

Mayor
Bernard H. Meyers
Mayor Pro Tem
Carole Dillon-Knutson
Councilmembers
Judy Arnold
Pat Eklund
Jeanne MacLeamy

City Manager
Daniel E. Keen

A LOS CIUDADANOS DE NOVATO:

Una relación apropiada entre el público y su policía, fomentados por la confianza y la confianza, es esencial si hay ser aplicación de ley eficaz. Los oficiales de policía deben poder actuar independientemente y tomar decisiones dentro de los límites de la autoridad concedida a ellos. Deben también estar libre ejercitar su mejor juicio e iniciar la acción de una manera razonable, legal e imparcial sin el miedo de la represalia, mientras que meticuloso observan el derecho de toda la gente. Sobre el jefe del policía reclina la responsabilidad de proporcionar un sistema de los procedimientos disciplinarios que sujetarán no solamente a personal a la acción correctiva cuando se determina la conducta incorrecta, pero también servirán justificar a personal de cargas o de la crítica injustificables cuando los deberes se realizan correctamente.

Nuestra meta en el departamento del policía de Novato es que usted nunca necesitará utilizar la información contenida en esta plegadora. Sin embargo, como todos los seres humanos, los oficiales de policía incurren en a veces equivocaciones. Si sucede esto, deseamos saber sobre él.

Damos la bienvenida a crítica constructiva de todos los miembros de la comunidad con respecto a nuestros procedimientos y de la conducta de nuestro personal.

Sinceramente,



Joseph M. Kreins
CHIEF OF POLICE

JK:rw

JK:rr

¿ES VERDAD QUE EL DEPARTAMENTO DE POLICIA QUIERE RECIBIR RECLAMACIONES EN SU CONTRA?

Claro que no. Una reclamación puede significar que alguien no está cumpliendo con sus deberes de una manera aceptable. Sin embargo, para mejorar el servicio que brindamos, tenemos que saber donde se necesita el mejoramiento.

¿TENGO QUE PONER LA RECLAMACIÓN EN PERSONA?

No. Preferiríamos hablar con usted en persona, pero aceptamos una reclamación por teléfono o carta. Hasta se puede hacer en forma anónima, pero así no le podremos responder directamente, ni tampoco podremos aclarar cualquier información conflictiva. Por eso le invitamos llenar el formulario de "Reclamación de Ciudadano" o "Citizen's Complaint Form."

¿QUIÉN INVESTIGARÁ MI RECLAMACIÓN?

Generalmente, su reclamación será investigada por el funcionario comandante responsable del acusado. En ciertas circunstancias la investigación puede asignarse a un investigador especial.

¿TIENEN LOS JUVENILES EL DERECHO DE PONER UNA RECLAMACIÓN?

Sí. Si usted tiene menos de 18 años, usted puede poner una reclamación, aunque preferimos que venga acompañado por un padre o tutor. También requerimos que su padre o tutor firme el formulario de "Reclamación de Ciudadano."

¿TENGO QUE SER CIUDADANO O RESIDENTE LEGAL DE ESTADOS UNIDOS PARA PONER UNA RECLAMACIÓN?

No. Usted no tiene que ser ciudadano o residente legal de Estados Unidos a fin de poner una reclamación.

¿QUE SUCEDERÁ AL POLICÍA/EMPLEADO?

Eso depende de lo que hizo el policía/empleado y también depende de la hoja de servicios del individuo. Si sus acciones fueron delictivas, será tratado tal como cualquier otra persona. Si sus acciones fueron impropias, pero no delictivas, recibirá consejos correctivos o sanciones disciplinarias por sus superiores.

¿LA INVESTIGACIÓN DE UNA RECLAMACIÓN DE CIUDADANO AFECTA A OTROS PROCEDIMIENTOS?

Las citaciones de tránsito o cargos de arresto no serán desechadas como resultado de una investigación de una reclamación de personal, a menos que la investigación finalmente pruebe que no existen bases para que dicha citación o un arresto pueda establecerse.

¿SABRÁ EL JEFE DE POLICIA SOBRE LA RECLAMACIÓN?

Sí. El Jefe de Policía recibe todas las reclamaciones contra los policías/empleados y finalmente revisa la investigación conducida en la reclamación de ciudadano.

¿PUEDO SABER LOS RESULTADOS DE LA INVESTIGACIÓN Y LAS ACCIONES DISCIPLINARIAS TOMADAS CONTRA EL POLICÍA/EMPLEADO?

Usted sabrá la disposición de la reclamación (probada, no probada, exonerada, o infundada). Toda acción disciplinaria tomada contra un policía/empleado es confidencial y no puede revelarse.

¿A QUIEN SE DEBE REPORTAR LA RECLAMACIÓN?

Se deben entregar las reclamaciones en persona al Comandante de Guardia o al supervisor del policía/empleado en el Departamento de Policía de Novato. Si no quiere entregarla en persona, puede hacerla por teléfono o mandarla por correo a la dirección siguiente:

Novato Police Department
909 Machin Avenue
Novato, CA 94945
(415) 897 - 4361

CIUDAD DE NOVATO
Departamento de Policía

Formulario de Queja

Nombre _____ Edad _____

Dirección _____

Teléfono Casa _____ Teléfono Trabajo _____

¿Cuándo se le puede llamar? _____

Tipo de Queja _____

Fecha del Incidente _____ Día _____ Hora _____

Policía(s) a quién se acusa _____

Locación del Incidente _____

Detalles del Incidente _____

Afirmo que las declaraciones aquí contenidas son, en lo mejor de mi conocimiento, verdaderas y correctas. Afirmo que he leído la declaración que sigue.

Usted tiene el derecho de poner una queja en contra de un policía por cualquier mala conducta. La ley de California requiere que esta agencia tenga un procedimiento para investigar una queja por parte de un ciudadano. Usted tiene el derecho de tener una copia de este procedimiento. Después de investigar, esta agencia podría determinar que no existe evidencia suficiente para tomar acción por su queja. Aunque ese sea el caso, usted tiene el derecho de poner una queja para investigación si cree que un policía se ha portado inadecuadamente. Todas las quejas, así como los reportes o descubrimientos relacionados a las quejas, tienen que ser retenidos por esta agencia por no menos de cinco años.

Está contra la ley para hacer una queja que usted sepa sea falso. Si usted hace una queja contra un oficial que sabe que es falsa usted puede ser procesado en una carga del delito menor por 148.6PC. He leído y entiendo la declaración antedicha.

Firma _____ Fecha _____
(Firma del Padre o Tutor, si usted tiene menos de 18 años)

Recibido por _____ Fecha _____

Revisado por el Jefe de Policía _____ Fecha _____

Asignado a _____ No. de Queja _____ Fecha _____

INTERNAL AFFAIRS & CITIZEN'S COMPLAINT INVESTIGATION ROUTING/CHECKLIST



Police Department
909 Machin Avenue
Novato, CA 94945
(415) 897-4361
FAX (415) 898-5344

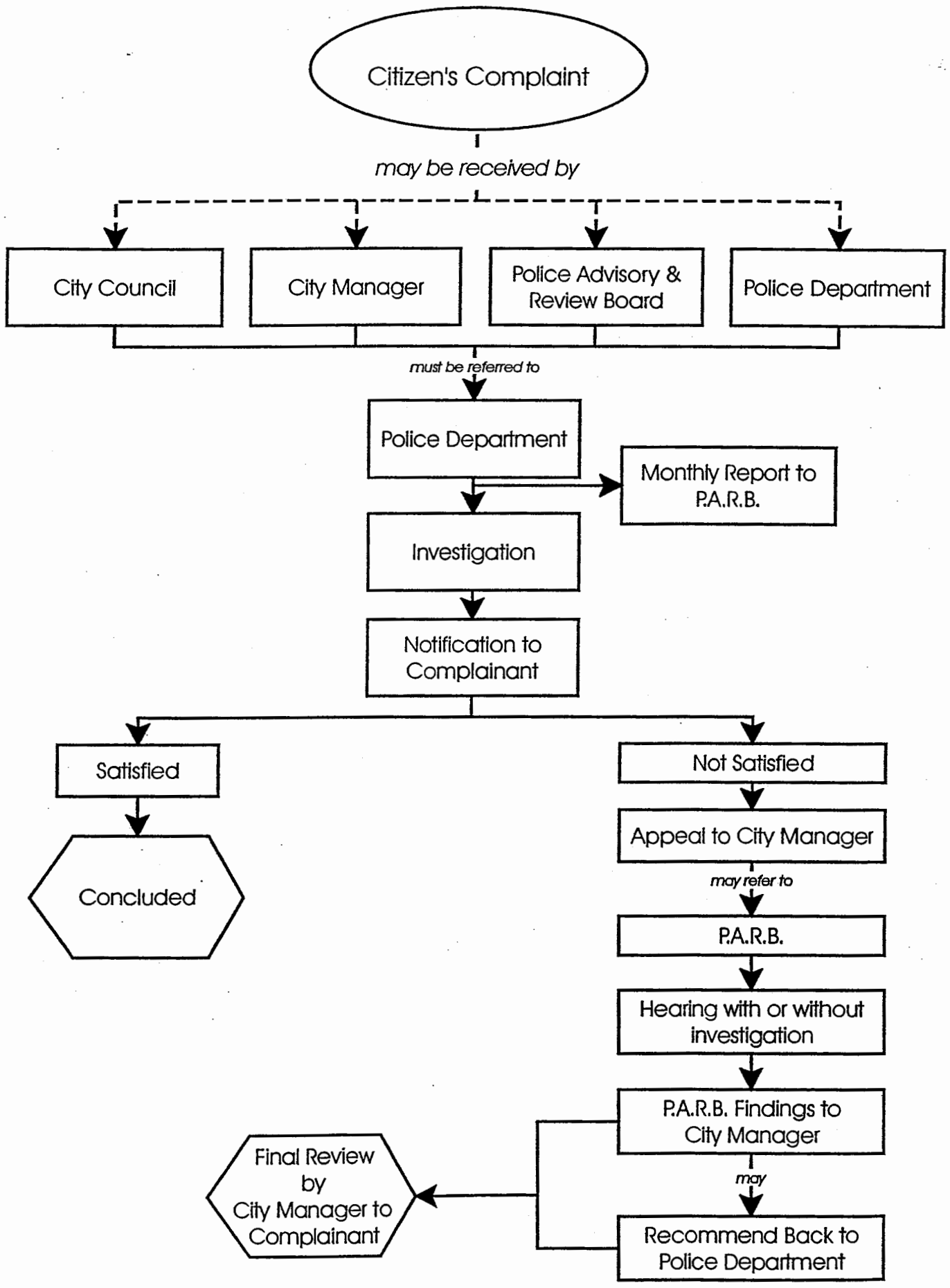
CC / IA # _____ - _____

Date: _____

Initiated By: _____

Brian Brady
Chief of Police

Date	Initials	
1.		Received by Administrative Secretary who assigns IA or CC file number (IA / CC # _____) and adds to log and prepares binder
2.		Chief of Police notified of Request for Investigation
3.		Appropriate Division Commander notified
4.		Appropriate Patrol/Unit Supervisor notified
5.		Investigation assigned to :
6.		Completed investigation routed to appropriate Commander within 30 days
7.		15 day extension requested by Commander
8.		Completed investigation routed to Chief of Police by Division Captain with recommendations
9.		If applicable, return to investigating officer for 15 day extension requested of Chief of Police Granted _____ Denied _____
10.		Additional Extension Granted
11.		Final approved by Chief of Police. Notification of extension to subject employee(s) done by IA Manager on _____ and every 30 days thereafter. (date) Date: _____ Date: _____
12.		Citizen advised of disposition by letter dated _____ Actions are:
13.		Notification in cases where the subject employee(s) actions are found to be exonerated, unfounded or not sustained dated _____



Appeals to the Novato Police Advisory & Review Board



If not satisfied with the findings of the Police Department, an appeal must be filed via the Office of the City Manager within 10 days.

All appeals must be in writing and signed by the person or their guardian making the complaint.

Appeal forms are available in the City Manager's Office, Monday-Friday, 9 am-5 p.m., 75 Rowland Way, Novato, CA 94945-5054; **415/899-8900**.

Copies of all appeals are forwarded to the Police Chief.

Those complaints that are formally investigated by the Board receive prompt, complete and comprehensive investigations.

The City Manager must notify the complainant whether the appeal has been authorized for review by the Board within fifteen working days of receipt of the appeal.

The Board shall provide all complainants with status reports at least every 45 days.

The Board, after its review, sends its findings and recommendations to the City Manager. The City Manager then reports the Board's findings to the Police Chief.

Persons filing appeals will be notified, in writing, of the disposition of their complaint. The City Manager must provide a written notice to the complainant of Board recommendations and any action taken on the recommendation within 15 working days from the receipt of the Board's confidential written report.

**CITY OF NOVATO
POLICE ADVISORY AND REVIEW BOARD**

APPEAL REQUEST FORM

Important Note:

This form is to be used to appeal the decision of the Novato Police Department on a citizen complaint. No appeals can be heard by the Novato Police Advisory and Review Board until a citizen complaint has been filed and investigated by the Novato Police Department. Citizen complaint forms can be obtained from the Novato Police Department or City Clerk.

*A request for appeal must be received by the City no later than **thirty (30)** working days from the time notice of the disposition of the citizens complaint investigation is received from the Police Department*

An appeal to the Police Advisory and Review Board can be initiated by letter to the City Manager or by completing this form. If mailed, the appeal requested should be sent certified mail, return receipt requested and addressed to:

City Manager
City of Novato
75 Rowland Way
Novato, Ca 94945

The following information is needed to properly process a request for appeal in a timely manner:

Name: _____ Daytime Telephone: _____

Mailing Address: _____

Citizen Complaint Number: _____

I do not agree with the decision of the Novato Police Department on the above identified case, and I request an appeal to the Novato Police Advisory and Review Board.

Signature: _____ Date: _____

PARB Appeal
R/PARB: 8/15/06



THE CITY OF
NOVATO
CALIFORNIA

900 Sherman Avenue
Novato, CA 94945
(415) 897-4311
FAX (415) 897-4354
www.ci.novato.ca.us

MEMORANDUM

MEETING

DATE: October 18, 2004

TO: City Council

FROM: Police Advisory and Review Board

SUBJECT: ANNUAL REPORT TO THE CITY COUNCIL

The duties and responsibilities of the Police Advisory and Review Board are outlined in City Council Resolution #112-02 (attached). The Board was set up as an objective, independent body, completely separate from the Novato Police Department. Its purpose is to: 1) provide for community participation in Police Department policies, procedures and practices, 2) recommend the establishment of educational police/community relations programs, and 3) in certain cases, conduct investigations into citizens complaints.

Citizen Complaints

Citizen complaints are reviewed when they meet certain criteria and are authorized by the City Manager for PARB review. During FY03/04, nine complaints were filed against employees of the Novato Police Department. Of those, three were appealed to the PARB and the Board reviewed two of those complaints. The third did not meet the criteria for PARB review. A summary of complaint activity follows this report.

Board Training

- Former Boardmember Barbara Kob and Assistant City Manager Mary Neilan attended the National Association of Civilian Oversight of Law Enforcement (NACOLE) conference in November 2003.

The Board received training in the following areas:

- The Emergency Operations Center (EOC) and the Marin Emergency Radio Authority (MERA)
- Hostage negotiations
- Dealing with aggressive appellants
- Police Officer training requirements

The Board also participated in a tour of the Police facility.

Fiscal Year 2003/2004

DATE/ COMPLAINT#	TYPE OF COMPLAINT	DISPOSITION	APPEAL	BOARD FINDING
10/6/03 #03-03	Policy regulations: Radar and parking on private property	Rescinded	NO	
10/20/03 #03-04	Violation of department rules & regulations	Rescinded	NO	
10/20/03 #03-05	Un-officer like conduct/ incompetence	Unfounded Exonerated	NO	
2/11/03 #03-06	Police Brutality	Not Sustained	YES	Upheld
1/5/04 #04-01	Officer Misconduct	Exonerated	YES	Appeal not heard
1/20/04 #04-02	Incorrect information on accident report. Unprofessional comments	Sustained	NO	
4/13/04 #04-03	Failure to enforce the law	Exonerated	YES	Upheld
4/26/04 #04-04	Slander/verbal abuse	Sustained	NO	
4/30/04 #04-05	Police did not respond to call	Unfounded	NO	

Attachment:

1. Resolution #112-02



THE CITY OF
NOVATO
CALIFORNIA

Police Department
909 Machin Avenue
Novato, CA 94945
(415) 897-4361
FAX 415-898-5344
www.ci.novato.ca.us

Brian Brady
Chief of Police

DATE: November 27, 2001
TO: City Council
FROM: Barbara Kob, Chair, Police Advisory and Review Board
**SUBJECT: POLICE ADVISORY AND REVIEW BOARD
FY 2000/2001 ANNUAL REPORT**

INTRODUCTION

The Police Advisory and Review Board was established by City Council Ordinance #1278 in 1992. The Board was set up as an objective, independent body, completely separate from the Novato Police Department. Its purpose is to: 1) advise the City Council, City Manager and Chief of Police on all matters pertaining to the administration of the Novato Police Department; 2) to provide community participation in policies, procedure and practices; and 3) to review citizen complaints and help establish educational police/community relations programs. During Fiscal Year 2000/2001, the activities of the Police Advisory and Review Board were divided into the following categories:

- Citizen Complaints
- Review of Policies and Procedures
- Training Issues
- Involvement with other Police Boards and Commissions
- Community Involvement

CITIZEN COMPLAINTS

It should be noted that the Board only investigates those complaints that meet certain criteria and which it has been authorized to review by the City Manager. Accordingly, during the fiscal year, there were ten complaints made against the Novato Police Department versus fifteen the previous year. Listed below is a summary of complaint activity.

FISCAL YEAR 2000/2001

DATE/ COMPLAINT #	TYPE OF COMPLAINT	DISPOSITION	APPEAL	BOARD FINDING
08/00 CC 00-06	Officers wrongfully arrested the complainant; six allegations	Exonerated Not Sustained	No	
09/00 CC 00-08	Contact with complainant was racially motivated	Not Sustained	Yes	Findings upheld
10/00 CC 00-09	Improper handling of case	Sustained	No	
10/00 CC 00-10	Improper questioning; seven allegations	Exonerated Unfounded	No	
12/00 CC 00-11	Harassment	Exonerated Unfounded Not Sustained	Yes	Closed. Complainant failed to show for two scheduled hearings
1/01 CC 01-01	Improper questioning; harassment; two allegations	Unfounded Exonerated	Yes	Findings upheld
2/01 CC 01-02	Misplaced property	Sustained	No	
4/01 CC 01-03	Failure to make an arrest	Unfounded	No	
5/01 CC 01-04	Improper handling of report	Unfounded		
6/01 CC 01-05	Inaccurate/false report	Exonerated Not Sustained Sustained	No	

Note: CC 00-07 was received in prior fiscal year, and mis-numbered.

REVIEW OF POLICIES AND PROCEDURES

- The Board reviewed and commented on questions used by the City Council to interview potential PARB members, and requested that diversity be a major factor in the appointment process.

BOARD TRAINING PROGRAMS

- Chair Courtney Hughes attended the annual NACOLE National Conference in September, 2000, and provided the Board with conference training materials.
- Board Members Kob, Hughes, Gobbin and Landi attended the 12-week Novato Police Citizens Academy.
- The Board participated in a goal-setting/team building retreat.
- The Board received training on Chain of Evidence, presented by Sergeant Tim Christensen.
- Chief Brady provided the Board with materials on hate crimes and domestic violence, including policies and protocols from the Novato Police Department, Marin County Law Enforcement, and the Novato Unified School District.

INVOLVEMENT WITH OTHER BOARDS AND COMMISSIONS

The Board is an active member of the following Boards and Commissions:

- The Bay Area Police Oversight Network (BAPON)
- California Network of Police Oversight (CALNET)
- National Association of Civilian Oversight of Law Enforcement (NACOLE)
- The Multicultural Oversight Committee

In conjunction with the Multicultural Oversight Committee, the California Office of the Attorney General and other agencies, the Board co-sponsored a workshop in Novato in October, 2000 dealing with issues of hate crime and hate violence reporting.

Together with the Novato Police Department, the Board participated in the grant application process to the California Highway Patrol to identify and eliminate racial profiling.

COMMUNITY INVOLVEMENT

The following members are active participants in the associations/boards noted below:

Courtney Hughes	BAPON Representative
Sherrie Holmes	Spectrum Center for Lesbian, Gay, Bisexual and Transgender Concerns; Canal Community Alliance; Homeward Bound of Marin
Barbara Kob	American Bar Association; Association for Conflict Resolution; American Society for Training and Development; Speakers Bureau of Marin County Women's Commission; National Women's Political Caucus; Canal Development Team; Housing Authority Grievance Panel; National Organization for Women; Marin County Strategic Planning Commission; National Women's Political Caucus; American Association of University Women
Stanley Gobbin	County Parks Open Space and Cultural Committee; Sheriff's Advisory Council; Marin County Fair

In addition to the above-mentioned community involvement, the Board and/or individual Board members participated in the following activities:

- The "Every 15 Minutes" program at Novato High School.
- Novato's Martin Luther King March and Celebration, January, 2001.
- Novato's Annual Downtown Fourth of July parade.
- The "Faces of Novato" project sponsored by the City of Novato's Multicultural Oversight Committee.

During the fiscal year, one member left the Board: Sherrie Holmes in March, 2001. We thank her for her valuable service to the Board.



THE CITY OF
NOVATO
CALIFORNIA

900 Sherman Avenue
Novato, CA 94945
(415) 897-4311
FAX (415) 897-4354

MEMORANDUM

DATE: February 3, 2000
TO: City Council
FROM: Sherrie Holmes, Chair, Police Advisory and Review Board
SUBJECT: **FY 1998/99 POLICE ADVISORY AND REVIEW BOARD
ANNUAL REPORT**

INTRODUCTION

The Police Advisory and Review Board was established by City Council Ordinance #1278 in 1992. The Board was set up as an objective, independent body, completely separate from the Novato Police Department. Its purpose is to: 1) advise the City Council, City Manager and Chief of Police on all matters pertaining to the administration of the Novato Police Department; 2) to provide community participation in policies, procedure and practices; and 3) to review citizen complaints and help establish educational police/community relations programs. During Fiscal Year 1998/99, the activities of the Police Advisory and Review Board were divided into the following categories:

- Citizens Complaints
- Review of Policies and Procedures
- Training Issues
- Involvement with other Police Boards and Commissions
- Community Involvement

CITIZEN COMPLAINTS

It should be noted that the Board only investigates those complaints that meet certain criteria and which it has been authorized to review by the City Manager. Accordingly, during the fiscal year, there were 9 complaints made against the Novato Police Department versus 14 from the previous year. None of these complaints were appealed to the Board. Listed below is a summary of complaint activity which is inclusive of two complaints carried over from the prior fiscal year.

CARRIED OVER FY 1997/98

DATE/ COMPLAINT #	TYPE OF COMPLAINT	DISPOSITION	APPEALED	BOARD FINDINGS
05/98 CC 98-07	Violation of Constitution	Exonerated	Yes	Failed to Appear
05/98 CC 98-08	False Report	Unfounded	No	N/A

FISCAL YEAR 1998/99

DATE/ COMPLAINT #	TYPE OF COMPLAINT	DISPOSITION	APPEALED	BOARD FINDING
11/98 CC 98-09	Unlawful Detention	Unfounded	No	N/A
02/99 CC 99-01	Failure to Notify Parents	Exonerated Unfounded Not Sustained	No	N/A
03/99 CC 99-02	Attitude of Officer	Sustained	No	N/A
03/99 CC 99-03	Threats	Withdrawn		
04/99 CC 99-04	Improper Driving	Withdrawn		
04/99 CC 99-05	Violation of Sec. 33303.1 of the Government Code	Not Sustained	No	N/A
05/99 CC 99-06	Harassment	Not Sustained Exonerated	No	N/A
06/99 CC 99-07	Officer Conduct	Not Sustained Exonerated Unfounded Sustained	No	N/A

06/99 CC 99-08	Refusal to Take Report	Unfounded Not Sustained	No	N/A
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REVIEW OF POLICIES AND PROCEDURES

- The Board reviewed and commented on the Police Department's (NPD) revised Citizen Complaint procedures.
- Reviewed and commented on the City's Community Employment Outreach Program.
- Reviewed and commented on the City's revisions to its policies on Committees, Commissions and Boards and the Board's enabling City Council resolution.
- Received briefing on NPD handling of Golden Gate Transit bus robbery.
- Sent letter of commendation to Officer John McCarthy for his exemplary investigative work.
- Received monthly curfew reports and reviewed amendments to the curfew ordinance.
- Reviewed draft of new performance standards for NPD.
- Received revised NPD Citizens Complaints Rules and Regulations to comply to changes in State law.
- Reviewed Chief Brady's November, 1998 response to ACLU's survey on Citizen Complaints and Police Practices.
- Reviewed the Directed Patrol Summary issued January 17, 1999.
- Requested exemption to City Council policy on term of Board Chair (declined by City Council).
- Reviewed April 21, 1999 report regarding definition of "formal" and "informal" citizen complaints.
- Improved accessibility of Citizen Complaint forms by having them available in NPD foyer.

BOARD TRAINING PROGRAMS

Each Board member participated in a "Ride-along" for training purposes. In addition, the Board received the following training during the year:

November, 1998 - Hate Crime Investigations
 April, 1999 - "Shoot/Don't Shoot" Video

Board Member Ortensia Gozashti attended 12-week NPD's Citizen Academy.

Board Member Milton Perkins attended disaster training for Novato Neighborhood Network by Novato Fire Protection District.

INVOLVEMENT WITH OTHER BOARDS AND COMMISSIONS

The Board is an active member of the following Boards and Commissions:

- The Bay Area Police Oversight Network
- The Multicultural Oversight Committee
- National Association of Civilian Oversight of Law Enforcement (NACOLE)

Board Members Milton Perkins and Ortensia Gozashti attended the annual NACOLE National Conference in Indianapolis in October, 1998.

The Board worked cooperatively with the Novato Arts Commission on outreach activities.

COMMUNITY INVOLVEMENT

The following members are active participants in the associations/boards noted below:

Sherrie Holmes, Chair
 Spectrum Center for Lesbian, Gay, Bisexual and Transgender Concerns
 Canal Community Alliance
 Rape Crisis Center

Milton Perkins
 Cheda Knolls Homeowners Association
 Novato Neighborhood Network

Ortensia Gozashti
 Multicultural Oversight Committee

Howard Courtney Hughes
 Democratic Action Committee

Rene Lopez
 National Latino Peace Officers
 Multicultural Oversight Committee
 Marin County Grand Jury
 Marin County LPOA
 Alameda LPOA
 Latino Democratic Club
 Court Appointed Special Advocate (CASA)

Kevin MacDougald

In addition to the above-mentioned community involvement, the Board and/or individual Board members participated in the following activities:

- Attended the November 30, 1998 District-wide Diversity Training presented by the Novato Unified School District.
- Conducted outreach efforts at the Farmer's Market, the Novato Festival of Art, Wine and Music and Labor Day at the Lake.
- Participated in the Annual Downtown Fourth of July parade.
- Participated in rally calling for an end to hate violence in Novato at Pioneer Park.
- Attended Celebration of Civility on October 3, 1998 at Pioneer Park.
- Provided consultation to Fairfax citizen seeking to establish a police review board in Fairfax.
- Attended Spectrum's annual event on October 17, 1998.
- Attended Blue and Gold Ball of the Latino Chapter of Law Enforcement Professionals in November, 1998.

During the fiscal year, Kevin MacDougald replaced Rene Lopez whose term had expired. We thank Mr. Lopez for his valuable service to the Board.

Department Name: Police

Program: Administration

Budget: \$1,299,591

Authorized Personnel: 7.50

Revenue: \$99,484

Funded Personnel: 6.63

Program Description

Administration provides overall management and direction of the Department's programs and activities. It ensures the most effective and responsive delivery of police services to the community. Administration fosters a positive and open relationship with all segments of the community.

Program Elements

Office of the Chief: The Chief of Police is responsible for the overall management and direction of the Department's programs and activities. This includes providing the most effective and responsive delivery of police services to the community. The Chief serves as an integral member of the City Management Team and assists in providing recommendations and solutions to important issues facing the City.

Operations Division: Under direction of the Captain of the Operations Division, this element provides management and direction to the following operations: Patrol, Traffic and Emergency Services. Operations is responsible for the maintenance and replacement of the Department's vehicle fleet. The City's Emergency Services Program includes maintaining the City's Emergency Operations Plan and Emergency Operations Center, assisting in the development of disaster plans and procedures, and is the lead staff in development of the Hazard Mitigation Plan. Although the Management Analyst assigned the Emergency Services duties has been eliminated, the function will be reassigned to department staff.

Services Division: Under direction of the Captain of the Services Division, this element provides management and direction to the following operations: Investigations, School Resource Officer program, Personnel and Training, Technical Services, Budget and Grant management, Crime Prevention, Volunteers in Policing, and Disaster Preparedness/Emergency Services for the entire City. The Services Division is also responsible for managing the Department's technology and information systems, communications equipment, Property and Evidence Room and facility maintenance.

Jail Booking: This program pays the jail booking fees charged to the City by the Marin County Sheriff's Department. The fees cover the costs of processing and booking suspects into the Marin County Jail. Counties are authorized to impose this fee by state law.

Police Advisory and Review Board: The Police Advisory and Review Board is a seven-member board, appointed by the City Council, whose purpose is to advise the Council, City Manager and Chief of Police on issues pertaining to the Police Department. The Board is an independent body and advises the Department on such issues as community relations, diversity, civil rights, grievances, citizen complaints and other law enforcement issues. The Police Advisory and Review Board is authorized to conduct independent investigations of citizen complaints through use of a private investigator. The operating budget for this board has been allocated for FY 2005/06.

Commission on Drugs and Alcohol: The Commission on Drugs and Alcohol is a nine-member body, appointed by the City Council, to develop and recommend drug and alcohol education and prevention programs to the Council. The operating budget for this commission has been eliminated for FY 2005/06.

Multicultural Commission: The Multicultural Commission is a seven-member body, appointed by the City Council, to promote diversity and act as the Hate Violence Response Team, recommend measures for the prevention of hate violence in the community, and seek to create a similar response throughout Marin County. The operating budget for this commission has been eliminated for FY 2005/06.

Program: Administration

Division Number 2000

SUMMARY OF 2005/06 RESOURCES USED BY PROGRAM ELEMENT:

	Employees		Total Hours	Personnel	Contract/ Consultant Services	Material & Supplies	Capital Outlay	Total Budget	Program Revenues
	Perm FTE	Temp FTE							
Program Elements:									
Office of the Chief	2.00		3,400	328,090		22,418		350,508	4,800
Operations Admin.	1.00		1,700	231,238		230		231,468	
Services Administration	3.63		6,171	558,941	2,720	3,963		565,624	
Jail Booking					142,352			142,352	94,684
Police Review Board						3,639		3,639	
Volunteers in Policing						6,000		6,000	
TOTAL	6.63	0.00	11,271	1,118,269	145,072	36,250	0	1,299,591	99,484

	Previous Actual 2002/03	Previous Actual 2003/04	Adopted Budget 2004/05	Adjusted Budget 2004/05	Proposed Budget 2005/06
Program Inputs:					
Personnel Services	658,554	814,949	944,263	900,621	1,118,269
Contract Services	195,789	150,193	167,322	213,862	145,072
Materials and Supplies	24,436	43,227	38,147	55,243	36,250
Capital Outlay	3,009	4,211			0
TOTAL	881,788	1,012,580	1,149,732	1,169,726	1,299,591



THE CITY OF
NOVATO
CALIFORNIA

900 Sherman Avenue
Novato, CA 94945
415/897-4311
FAX 415/897-4354

March 26, 1998

Mayor
Carole Dillon-Knutson
Mayor Pro Tem
Michael Di Giorgio
Councilmembers
Pat Eklund
James W. Henderson
Cynthia L. Murray

Civil Grand Jury of Marin County
Hall of Justice - Civic Center
P.O. Box 4988
San Rafael, CA 94913-4988
Attention: Judge Vernon Smith, Presiding Judge

City Manager
Roderick J. Wood

Re: 1997 Marin Grand Jury Final Report

Dear Judge Smith:

The City Council, at their March 24, 1998 meeting, reviewed correspondence prepared by the Police Advisory Review Board, Housing & Services Commission and staff to the Grand Jury's request for response to various sections of their Report. At Council's direction, this correspondence is being forwarded to the Grand Jury.

If I can be of further assistance, please do not hesitate to write or call.

Sincerely yours,

Shirley Gremmels
City Clerk

M/2751

cc: Mayor and Novato City Councilmembers
City Manager

December 2, 1997



**CITY OF
NOVATO
CALIFORNIA**

Civil Grand Jury of Marin County
Law and Justice Committee
Hall of Justice - Civic Center
P.O. Box 4988
San Rafael, CA 94913-4988

Police Department
100 Sherman Avenue
Novato, CA 94945
TELEPHONE 415/897-4361
FAX 415/898-5344

I received your report dated November 25 and am responding to your request on Items 4, 5, 6, and 7 in your recommendations.

Insofar as Recommendation 4 is concerned, we normally conclude citizen complaint investigations in approximately 30 working days. Should the investigation exceed that time, the party making the complaint is notified in writing of the extension and the time limit.

Recommendation 5 is a little bit difficult to respond to, since I don't know what your recommendation entails insofar as having the Chief of Police or Sheriff make the explanation to a citizen. Obviously, if someone comes to the station at midnight to make a complaint, the Chief of Police or Sheriff may not in fact be in the building.

In our Department, the party making the complaint receives a letter from the Office of the Chief of Police, outlining the complaint procedures, and there is always included a paragraph which tells the individual they have the right to call the Office of the Chief to garner further information about the process.

Recommendation 6. Most police agencies and sheriff's departments, send their investigators to the same POST approved school in order that they may in fact receive the necessary training to conduct internal affairs investigations. During the course of that training, which is approved by POST, the officers and deputies receive the same training based on the same course format.

Recommendation 7. Insofar as the Novato Police Department is concerned, the Citizen Complaint forms are available at the front counter, and individuals may ask the clerk for a form, or if they feel reticent to do so, they may phone in and one will be mailed to them. In addition, we have accepted anonymous complaints, although these are extremely difficult to investigate, owing to the simple fact you don't have a complaining party to interview.

I hope this answers your concerns as expressed in your letter. If you have additional questions, please contact my office.

Sincerely,

Brian Brady
Chief of Police

BB:sl

City Manager
Roderick J. Wood



THE CITY OF
NOVATO
CALIFORNIA

L-25
4.

MEMORANDUM

Police Advisory & Review Board

900 Sherman Avenue
Novato, CA 94945
415/897-4311
FAX 415/897-4354

DATE: March 19, 1998

Mayor
Carole Dillon-Knutson
Mayor Pro Tem
Michael Di Giorgio
Councilmembers
Pat Eklund
James W. Henderson
Cynthia L. Murray

TO: Novato City Council
via Rod Wood, City Manager

FROM: Novato Police Review Board

SUBJECT: Response to 1997 Grand Jury Recommendations

City Manager
Roderick J. Wood

POLICE REVIEW BOARDS ARE NOT ABOUT BAD COPS BUT about GOOD GOVERNMENT. The better informed our leaders, the better decisions they can make based on empirical evidence and reliable information which is not filtered and edited through levels of bureaucracy that tends to keep our leaders insulated from the concerns of the people.

GRAND JURY RECOMMENDATION #1. Copies of all citizen complaints should be forwarded simultaneously to the City Manager, City Council and any existing Police Review Board upon receipt by the Police Department.

The Police Review Board agrees with Recommendation #1. Since the City Manager already receives the complaint, the information is already in the hands of the City of Novato, and we see no problem with the City Council receiving a copy. One of the powers and duties of the NPARB under the law which created said entity is "To receive complaints about individual police personnel and forward them to the police department." Nowhere in the ordinance does it state that we only get edited information based on what the police department determines the complaint addresses.

GRAND JURY RECOMMENDATION #2. Public Review of Citizen Complaints.

The Police Review Board agrees with Recommendation #2. Five thousand dollars of the taxpayers' money was spent on a survey to determine if the citizens of Novato were aware of the Police Review Board. The survey determined that only one third of the citizens were aware that the NPARB existed.

City Council meetings are televised and receive public exposure. In Novato, by the time the City Council schedules yearly review, the NPARB will have already

investigated the complaint, and a decision will have been made. What better way to inform our taxpayers than five Novato citizen members of the Police Review Board have examined "X" number of complaints. As has been the history of the Board in the past, open dialog with the Novato Police Department will continue. All complaints have been reviewed and discussed by the Board.

This will be an excellent way to inform our taxpayers that the Review Board exists and would provide maximum exposure at no costs to Novato under a system that is already in place.

The complaints could be reviewed without names being attached to the complaint and in accordance with confidential laws. If a lawsuit occurs, then that particular item could be eliminated in accordance with present legal and confidential procedures.

GRAND JURY RECOMMENDATION #3. Complaint form should be changed to inform the public of the right to appeal.

The Police Review Board agrees with Recommendation #3.

The history of our government has always been a system of checks and balances. At the moment there are no checks and balances on the Police Review board. This is an opportunity for the leaders in Novato to once again lead the way in keeping our taxpayers informed of the avenues available to resolve issues out in the open and through a democratic process.

The NPARB will change the form to reflect the recommended changes after we conduct our own study to determine what additional information is needed.

GRAND JURY RECOMMENDATION #6. Marin County Law enforcement should standardize policies and procedures to investigate citizen complaints.

The NPARB agrees with Recommendation #6.

While we agree with Recommendation #6, we would have no authority to influence other entities but would be willing to participate with representatives from other agencies to determine the feasibility of such an endeavor.

GRAND JURY RECOMMENDATION #7. Citizen Complaint forms should be readily available at police stations for access to the public.

The NPARB agrees with Recommendation #7.

GRAND JURY RECOMMENDATION #8. Installing of video and sound recording device.

The NPARB agrees with Recommendation #8.

VIDEO AND SOUND RECORDING IN POLICE VEHICLES: This would be an excellent way to disprove accusations against our officers and in the long run might save money when a citizen threatens to sue the city, as a video record would be rather difficult to disprove.

AUDIO RECORDING EQUIPMENT ON THE OFFICER. Audio recording equipment is already in use in various police departments in our country. This encourages our officers to act in a highly professional manner, and in our opinion, would save the Police department time, money, and effort involved in internal affairs investigations. Consider the time involved in internal investigations. Consider the reports, interviews, time, and number of people involved in an Internal Affairs Investigation. There would be a tremendous savings if the Police department could just run the video or the audio tape and solve the complaint immediately in favor of the officer.

Safety factors:

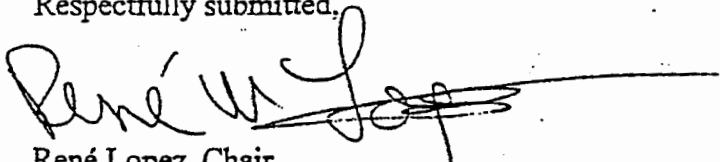
In a documented case out of Texas, a police officer was killed after making a stop and the camera recorded the incident. As a result of the incident being on film, the perpetrators of the crime were caught, tried, and convicted. Shortly thereafter the lesson that was learned in "what to do" and "what not to do" saved another officer's life in that same agency after the film was used as a training film.

GRAND JURY RECOMMENDATION #9. Disclosure of costs involved in the settlement of suits for misconduct on the part of City employees.

The NPARB agrees with Recommendation #9.

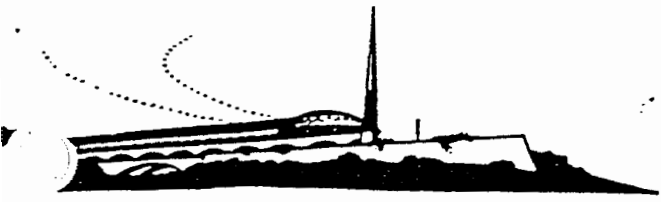
It is a disservice to the taxpayers that such vital information is kept secret. If a City in Marin County is paying millions of dollars in lawsuits, and we are paying nothing, then we suggest our City employees are doing an excellent job, and there are problems in other parts of Marin. Is the converse true? How do the citizens know? What is the statutory authority for keeping this secret?

Respectfully submitted,



René Lopez, Chair
Novato Police and Advisory Board

H-2
2.



CIVIL GRAND JURY OF MARIN COUNTY
HALL OF JUSTICE - CIVIC CENTER
P. O. Box 4988
San Rafael, CA 94913-4988

November ~~15~~, 1997

To: All members of the Board of Supervisors
City Managers, 11 Municipalities, Marin County
Chairpersons, City Councils, 11 Municipalities, Marin County
Ten Police Chiefs, Marin County
Marin County Sheriff

From: Susan Haas, Foreman, 1997 Grand Jury

Re: Request for response to report by 1997 Marin County Grand Jury

Enclosed is the report prepared by the 1997 Marin County Grand Jury on
Reforms Needed in Police Complaint Investigation and Oversight

I am submitting it to you for your response as noted on Page 6.

On the reverse side of this request is a copy of the sections of the California Penal Code which state the time with which the response is to be made, and the format prescribed to the response.

We ask that, in addition to your written response sent to the Presiding Judge, you send us an electronic copy, using the grand jury's E-mail address gjury@marin.org. And in addition that you send an electronic copy to Scott McKown for inclusion on the grand jury's website. Scott McKown's E-mail address is scott_mckown@marinfo.org.

If you would like to discuss details of your response prior to finalizing it, please leave a message with Irene Mariani at 499-6072.

(over, please)

Sections of CALIFORNIA PENAL CODE Pertaining To Response To Grand Jury Reports

933. (c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elective county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All such comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury.

933.05. (a) For purposes of subdivision (c) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (c) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county department headed by an elected officer, both the department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected department head shall address all aspects of the findings or recommendations affecting his or her department.

....
(e) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the supervising judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

L-6
1.

**1997 MARIN COUNTY GRAND JURY
FINAL REPORT**

MARIN COUNTY GRAND JURY LAW AND JUSTICE COMMITTEE

Reforms Needed in Police Complaint Investigation and Oversight

November, 1997

"As a Law Enforcement Officer, my fundamental duty is to serve mankind, to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice..."

"I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities."

--Law Enforcement Code of Ethics

In an effort to ensure that citizens receive fair treatment from the police, the California Penal Code Section 832.5 requires each agency which employs police officers to establish and maintain a citizen complaint procedure. The grand jury, in this report, makes a number of recommendations it believes would substantially enhance the effectiveness of current complaint investigations and oversight.

Background

The Grand Jury decided to study Marin County procedures after receiving and investigating a number of alleged misconduct complaints and

considering opinions of community leaders, organizations and citizens, some of whom advocated the establishment of a countywide police review board. In addition it interviewed fourteen Chief of Police or senior police officers and the Marin County Sheriff.

Findings

1. Of seven alleged law enforcement misconduct complaints investigated by the grand jury, in at least three there was likelihood of some misconduct. On these the grand jury wrote letters expressing concern to appropriate agencies.
2. In 1996 there were 88 citizen complaints received by Marin County police departments and the sheriff's department. In 1997, through August 15, there were 37 complaints (Attachment A). Of all these complaints, 94 (75.2%) were considered without merit and were dismissed by the investigating department.
3. There are 11 municipalities in Marin County policed by 10 law enforcement agencies (Larkspur/Corte Madera have joint forces). In addition, there is the County Sheriff's Department, the College of Marin Police Officers, the California Highway Patrol at Corte Madera and the Park Police at the Headlands. This report concerns itself entirely with Marin County police departments and the Sheriff's Department.
4. Marin municipalities have differing conditions, problems and philosophies concerning law enforcement.
5. There are also a wide variety of ways municipalities investigate complaints, e.g., two municipalities have established their own Police Review Board; one uses outside, independent investigators; some police departments use other police agencies to perform local internal investigations.
6. Citizen complaint forms are not readily available in one police department.

7. Citizens dissatisfied with police responsiveness may appeal to the appropriate City Manager, the City Council, the grand jury or may seek judicial remedies. Complaints occurring in unincorporated areas must go through the Sheriff's Department. If the citizen is dissatisfied with that initial handling of the complaint, he/she may appeal it to a Captain. If the citizen is still dissatisfied, he/she may then appeal to the Sheriff. After that, the citizen can file a formal complaint with the grand jury and/or seek judicial remedies.

8. Tax-payer dollars paid to individuals as settlement for misconduct, as well as the costs of defending against citizen complaints, are not usually made public and are not included in annual budgets.

9. There is an ongoing issue in the County about the need for a countywide Police Board.

- Various civic groups, i.e., American Civil Liberties Union, Democratic Central Committee of Marin, Marin Countywide Coalition on the Homeless, Mental Health Association of Marin, Marin Human Rights Commission, National Organization for Women (Marin chapter) substantially support such a Board pointing out that no countywide mechanism is currently in place to track citizen complaints against the various agencies, to ascertain how many complaints are filed annually and how they were resolved. They state that agencies are reluctant to furnish citizens with records concerning complaints and investigations.
- The above groups envision a commission funded by each Marin community and comprised of nineteen members with representatives from each city and the county. It is their belief such a Board would provide a forum for citizens wishing to make complaints.
- Those favoring this proposal contend that police cannot monitor themselves fairly and objectively and that a Review Board would have a deterrent effect on improper police conduct. They assert that such a

Board would increase the likelihood that each person will be dealt with fairly by the police and that it would enhance public confidence.

- Those who oppose a Review Board believe it would infringe on police authority, might fail to fully protect the rights of police officers and would tend to demoralize police departments. They further believe that a civilian board would lack requisite experience and knowledge to evaluate police actions, that it diffuses responsibility, duplicates Internal Affairs Investigations and would waste time on some complaints. They believe the cost to the taxpayers who foot the bills would be excessive.
- Police Chiefs for the most part do not believe that review boards are necessary and believe that they are quite able to conduct their own investigations internally. However, all felt that they could work with a City Review Board if it were mandated by their City Council.

Observations

All citizens have the right to expect fair and lawful treatment from their police. Police officers who perform their duties are entitled to citizens respect and support.

There are obvious areas of reform needed in the complaint investigation process and the oversight process.

There is a healthy debate over the proposal for a countywide police review board. No matter what the outcome of this debate, there are immediate steps which should be taken. Following are the grand jury's recommendations.

Recommendations

1. Copies of all citizen complaints should be forwarded simultaneously to the City Manager, City Council and any existing Police Review Board upon receipt by the Police Department. In the unincorporated portion of the

County, copies of these complaints should be forwarded by the Sheriff's Department to the Board of Supervisors.

2. At least once a year all City Councils and the Board of Supervisors should review all citizens' complaints. This information should be then made public at a special public meeting (except for information protected by law as confidential).
3. The complaint form should prominently advise the complainant that if dissatisfied, he or she has appeal right and can contact the City Manager, City Council, the Marin County Grand Jury or seek judicial remedies.
4. Investigations, internal or by a review board, should be completed within 90 days and the complainant should get a progress report at least every 30 days.
5. All citizen grievances should be handled openly and directly; the results should be thoroughly explained to the citizen making the complaint by the Chief of Police or the Sheriff.
6. All Police Departments and the Sheriff should endeavor to agree upon and implement a unified set of rules and procedures relative to investigating a citizen complaint.
7. Citizen's complaint forms should be readily available at police stations for access to the public.
8. Each community/county should consider installing video and sound recording devices in police vehicles and audio recording equipment on the officer in order to provide a complete, concise and accurate record of all incidents involving police officers and citizen contacts.
9. All cities/county should disclose all costs and settlements for misconduct without violation of confidentiality on an annual basis, i.e., useful performance measure.

The grand jury wishes to express its appreciation to the people who shared their time and input and who graciously provided information used in this report. Special thanks is due to Police Chief Peter Herley of Tiburon for his cooperation and indispensable advice.

THE FOLLOWING PEOPLE WERE INTERVIEWED OR PROVIDED INFORMATION FOR THIS REPORT

Eileen Siedman, Chairperson, Marin Branch ACLU
 One member of a Police Review Board
 Robert T. Doyle, Sheriff of Marin
 Thomas A. Aiello, Lt. Tiburon Police Department
 Jim Anderson, Chief of Police, Fairfax Police Department
 Brian Brady, Chief of Police, Novato Police Department
 Phillip D. Green, Chief of police, Twin Cities Police Department
 Peter G. Herley, Chief of Police, Tiburon
 Andre Horn, Captain, Twin Cities Police Department
 John Lundquist, Chief of Police, Belvedere
 Donald E. MacQuarrie, Captain, Sausalito Police Department
 Robert G. Ritter, Director of Police and Fire Services, Mill Valley
 Cam Sanchez, Chief of Police, San Rafael
 Stephen M. Willis, Chief of Police, Sausalito
 Three concerned citizens
 Four inmates at City Jail
 Six Deputy Sheriffs

REQUESTS FOR RESPONSE

To Recommendations:

Board of Supervisors: 8, 9

City Managers, City Councils of 11 municipalities/county: 1, 2, 3, 6, 8, 9

Ten Police Chiefs governing eleven municipalities: 4, 5, 6, 7, 8

Marin County Sheriff: 4, 5, 6, 7, 8

APPENDIX A

Citizens' complaints received by Marin County Police Departments from January 1, 1996, through August 15, 1997

	<u>1996</u>	<u>1997</u>	<u>Not Sustained by Investigating Department</u>
Belvedere	0	0	0
Corte Madera	6	1	3
Fairfax	1	4	3
Larkspur (see Corte Madera)			
Mill Valley	5	2	6
Novato	16	6	17
Ross	0	1	1
San Anselmo	0	0	0
San Rafael	25	8	23
Sausalito	10	4	12
Tiburon	2	0	2
Sheriff Department	<u>23</u>	<u>11</u>	<u>27</u>
Total	88	37	94

The remaining 31 complaints were either sustained, pending, withdrawn by the investigating department. Two were for information only and one was suspended.



THE CITY OF
NOVATO
CALIFORNIA

900 Sherman Avenue
Novato, CA 94945
(415) 897-4311
FAX (415) 897-4354

www.ci.novato.ca.us

MEMORANDUM

DATE: March 13, 2001

TO: Council-Appointed Advisory Commissions, Boards,
and Committees

FROM: Shirley Gremmels, City Clerk

SUBJECT: **BROWN ACT - THE OPEN PUBLIC MEETING ACT**

Attached to this memo is a user's guide to the Brown Act. This memo is intended to give you the key elements of the Act as it pertains to Council-appointed bodies. This memo should not preclude your reading the attached manual.

Key Elements of the Brown Act

1. Agendas for advisory groups are required for all meetings, and technically should be posted at least 24 hours in advance of the meeting. It is suggested, however, to be legally safe that the agenda be posted 72 hours in advance if possible, especially for regularly scheduled meetings. The agenda should be posted on the official City bulletin board, which is located on the kiosk in the Police Department lobby. Agendas should also be posted on the bulletin board in the City Clerk's office.
2. A Council-appointed body cannot conduct business unless a quorum of the members are present. Subcommittees that are appointed by the body are not to be considered in lieu of the actual members appointed by the Council for a quorum. Subcommittees cannot have a quorum of the body unless that subcommittee also complies with all of these requirements.
3. The Brown Act guarantees that the public has the right to attend the meeting and speak on any item that is on the agenda. A time must be designated for public comment on the agenda. The Act also guarantees that the public has a right to review agendas and other materials distributed to the majority of the body.

Please let me know if I can be of further assistance.

/mam
Attach.

**A user's guide to the
Ralph M. Brown Act**

*"All meetings of the legislative body
of a local agency shall be open and
public, and all persons shall be
permitted to attend any meeting of
the legislative body of a local agency . . ."*

**OPEN
&
PUBLIC**

III

OPEN & PUBLIC

III

A USER'S GUIDE TO THE
RALPH M. BROWN ACT

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Sacramento, California*

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FOREWORD

This guide is a joint project of organizations that represent diverse views and constituencies—but share a common interest in the open meeting laws for local governments.

One goal with this publication is to put the Ralph M. Brown Act in lay language, so it can be readily understood by local officials, by the public and by the news media.

Another goal is to identify problem areas in an effort to reduce controversy over the Act. As a consequence, we have tried not only to cover all aspects of the Act, but to also pay extra suggestions on how to minimize potential problems; these are primarily practical ways for officials to stay out of hot water.

However, this guide is not intended to provide legal advice, and it should not be taken as a legal standard by which to judge the propriety of official conduct. We are confident that no court would lend it such authority, and it is only in that confidence that the guide has been ventured as a common project.

A public agency's legal counsel is responsible for advising its staff, board or council on Brown Act requirements and prohibitions, and should always be consulted when issues arise.

To lessen confusion, we have adopted a format in which:

- ◆ Most text will look like this.
- ◆ *But suggestions will be italicized. (I)*
- ◆ And for hypothetical examples, the typeface will look like this. (I)

*The League thanks the following attorneys for their work on this update to the original guide.
The League also thanks the organizations listed on the back cover for their contributions.*

Michael Jenkins, Chair of Open and Public Revision Committee
City Attorney, Diamond Bar, Hermosa Beach, Rolling Hills and West Hollywood
Richards, Watson & Gershon, Los Angeles

Valerie J. Armento
City Attorney, Sunnyvale

Ariel Pierre Calonne
City Attorney, Palo Alto

Sonia Rubio Carvalho
City Attorney, Colton and Azusa
Best, Best & Krieger, Riverside

Debra E. Corbett
City Attorney, Tracy

Gary Gillig
City Attorney, Oxnard

Daniel S. Hentschke
General Counsel
San Diego County Water Authority, San Diego

Joyce Hicks
Assistant City Attorney, Oakland

Scott C. Smith
City Attorney, Santee
Best, Best & Krieger, San Diego

Gabrielle Whelan
Deputy City Attorney, Livermore

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PEOPLE DO NOT YIELD THEIR SOVEREIGNTY”

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

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

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

Ralph Brown served in the Assembly for 19 years, starting in 1942, the last three years as its speaker. He then became an appellate court justice. But, he is best known for the open meeting law, which carries his name.

The basic law

Two key parts of the Brown Act have not changed since its passage. One is the intent section with which it begins:

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

“The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants their right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”¹

Not all intent language in statutes has an impact on the judiciary. But the courts have leaned on the intent section of the Brown Act to narrowly construe exceptions to the law and liberally construe provisions, which further openness and access.²

That opening is the soul of the Brown Act. Its heart comes later, a section that declares:

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”³

That one sentence is by far the most important of the entire Brown Act, and it is the basis for the next five chapters.

Change and expansion

Although these two key provisions have remained intact, very little else in the Brown Act has. Changes have been adopted in numerous sessions of the Legislature. Examples include requirements for agendas and public notice, creation of new exceptions, and addition of a mechanism to invalidate certain actions if the Brown Act has been violated.

Over the years, a number of appellate court decisions and Attorney General Opinions have interpreted key elements of the Brown Act, such as what constitutes a “meeting.” In 1994, many of these holdings were enacted into law. In addition, the 1994 changes extensively revised provisions about sessions that can be closed to the public.

The Brown Act now covers virtually every type of local government body, elected or appointed, decision-making or advisory, permanent or temporary. Even some types of private organizations are covered.

Similarly, meetings subject to the Brown Act are not limited to formal gatherings. They also include any communication or device by which a majority develops “a collective concurrence as to action to be taken.”



Chapter 1: Introduction

Limitations

Except for closed sessions, the Brown Act requires all aspects of the decision-making process by legislative bodies—including discussion, debate and acquisition of information—to be conducted in public.

But the law is limited to multi-member government bodies, and only they can violate its provisions. The Brown Act does not apply to individual decision-makers. It also exempts *ad hoc* advisory committees—as distinguished from standing committees—made up solely of less than a quorum of a legislative body. The law does not restrict local agency staff or employees except to the extent that they act as a conduit for collective action or discussion by the members.

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

The Brown Act allows a legislative body to adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech. Otherwise, individual citizens, lobbyists, and members of the news media possess the right to attend, broadcast and participate in public meetings.

Controversy

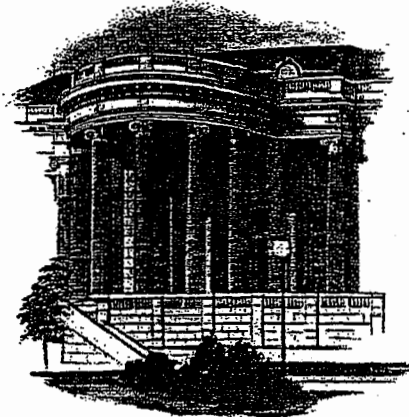
Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media members often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that the closed sessions are being misused.

Public officials,⁴ on the other hand, complain that the Brown Act makes it difficult to respond to constituents, and requires public discussions of items better discussed privately—such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act unnatural. The techniques that serve so well in business—the working lunch, the private lobbying and compromises, the slow evolution of a project or decision—are no longer possible. Closed meetings can be more efficient; they eliminate grandstanding and promote candor.

As a matter of public policy, California has concluded more is to be gained than lost by the public meeting process. Government behind closed doors may well be efficient and business-like. But invisible government is often unresponsive. It is invariably distrusted.

The Brown Act has without question had a major impact on the way public bodies conduct business. Closed door meetings are now the exception.

California has concluded more is to be gained than lost by the public meeting process.



Notes

1. California Government Code section 54950
2. In reviewing these endnotes, keep in mind that the Brown Act itself has the greatest force and effect. Next in order are appellate court decisions which interpret the Brown Act and if published serve as precedent for trial courts. Published opinions of the Attorney General do not have the force of law but are persuasive to the courts; letter opinions of the Attorney General are usually narrower in scope and less influential.
3. California Government Code section 54953(a)
4. As used in this publication, "public official" includes both elected and appointed officials.

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ALL MEETINGS OF ...”

For most of its history, the Brown Act referred to various kinds of meetings but deferred to the courts and the California Attorney General to determine whether a particular gathering was a meeting. That ended in 1994, when the term meeting was first defined in the Brown Act. There was no change in the clear distinction between a legislative body member's contacts with individuals on the one hand and collective gatherings of a legislative body majority on the other and. With few exceptions, the Brown Act applies only to collective gatherings.

Specifically, the Brown Act defines a meeting as:

“... any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.”¹

Thus, the term “meeting” is not limited to gatherings at which action is taken but also includes deliberative gatherings as well.

Except for teleconferencing discussed below, the Brown Act specifically prohibits “any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.”²

After the above very inclusive language, the Brown Act creates six exceptions:³

INDIVIDUAL CONTACTS

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

Individual contacts, however, cannot be used to do by stages what cannot be done in one step. For example, a series of individual contacts that leads to a “collective concurrence” is prohibited. Serial meetings are discussed below.

◆ CONFERENCES

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

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

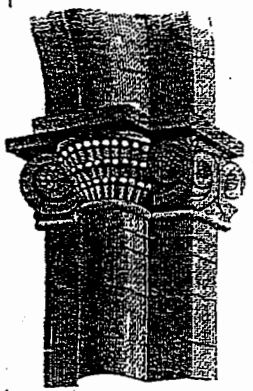
◆ COMMUNITY MEETINGS

The third exception allows a legislative body majority to attend an open and publicized meeting organized by another organization to address a topic of local community concern. Again, a majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates night if the meetings are open to the public.

“I see we have four distinguished members of the city council at our meeting tonight,” said the chair of the Environmental Action Coalition.

“I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?”

The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if the majority engages in a collective deliberation process outside a scheduled meeting of the body. In the above example, a discussion by the majority encouraging citizen input on the issues would be permissible. A majority discussion about each member's support of or opposition to such an ordinance would violate the Brown Act.



The term “meeting” is not limited to gatherings at which action is taken but also includes deliberative gatherings.

◆ OTHER LEGISLATIVE BODIES

In 1997 the fourth exception was expanded to allow a legislative body majority to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.⁴ Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's subject matter jurisdiction. This exception allows, for example, a city council majority to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business.

In response to a 1996 opinion of the Attorney General, the Legislature created a fifth exception. That exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body provided that the legislative body members who are not members of the standing committee attend only as observers,⁵ meaning that they cannot speak or otherwise participate in the meeting.

◆ SOCIAL OR CEREMONIAL EVENTS

Finally, an exception permits a legislative body majority to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the local agency.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception or farewell. The test is not whether a majority attends the function, but whether business of a specific nature within the subject matter jurisdiction of the local agency is discussed. So long as no local agency business is discussed, there is no violation of the Brown Act.

Collective briefings

None of these six exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings involving a majority of the body in the same place and time must be open to the public and satisfy the notice and agenda requirements of meetings.

Retreats or workshops of legislative bodies

Formerly, there was disagreement among local agency attorneys whether the Brown Act applied to retreats or workshops of legislative bodies. The consensus today is that such gatherings by a majority of legislative body members are covered. This is the case whether the retreat or workshop focuses on long-range agency planning, discussion of critical local issues or on team building and group dynamics.⁶

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. Such meetings at any one time involve only a portion of a legislative body, but eventually involve a majority.

There may be nothing improper about the substance of a serial meeting. The problem is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision making.

The serial meeting may be a daisy-chain in which Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum and collective concurrence has been established. A hub-and-spoke process in which, for example, a local agency attorney (the hub) telephones members of a redevelopment agency (the spokes) one by one for a decision on a proposed action,⁷ or in which a chief executive briefs board members prior to a formal meeting and, in the process, reveals information about the members' respective views, also violates the Brown Act.

A member has the right, if not the duty, to meet with constituents to address their grievances. That member also has the right to confer with a colleague about local agency business. But if in that process a "collective concurrence as to action to be taken" is reached among a majority, the Brown Act has been violated. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.⁸

On the other hand, a unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.⁹ Such a memo, however, may be a public record.¹⁰

A hub-and-spoke process in which a chief executive briefs board members prior to a formal meeting and reveals information about the members' respective views violates the Brown Act.

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INFORMAL GATHERINGS

Chapter 2: Meetings

phone call was from a lobbyist. "Say, I need you for that project in the south area. How about it?"

"Well, I dunno," replied Board Member Adams. "It's kind of a sticky proposition. You sure you want to cast my vote?"

"Well, I've got Baker and Charles lined up and they're both leaning. With you I'd be over the top..."

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

Neither the lobbyist nor the reporter has done anything wrong. But the board member may have violated the Brown Act by hearing about the positions of other board members. The prudent course is to try to keep lobbyists, staff and news media from revealing the positions of others.

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items."

"Some of this material is very technical, and council members don't want to sound like idiots talking about it in public. Besides that, briefings will be held in private at the meeting."

The Brown Act may or may not prohibit such briefings. The Attorney General concludes that staff briefings are per se illegal.¹¹ That point of view notwithstanding, the consensus among local agency attorneys is that staff briefings of legislative body members are allowed if staff is not used as a conduit for achieving collective concurrence, and if during the briefing staff does not disclose the views and positions of other members. Members should be cautious about discussions about local agency business with developers, advocates, or opponents and proponents on issues if such discussions could achieve a collective concurrence.

"Thanks for the information," said Council Member Smith. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "Any idea what the other council members think of the problem?"

The planning director should not ask, and the council member should not answer. A one-on-one meeting between a member of a legislative body takes a step toward collective concurrence if either person reveals or discusses the views of other members.

Often members are tempted to mix business with pleasure—for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted are prohibited under the Brown Act.¹² A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.

Thursday, 11:30 a.m. As they did every week, the board of directors of Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board...

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues. But it is the kind of situation that should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

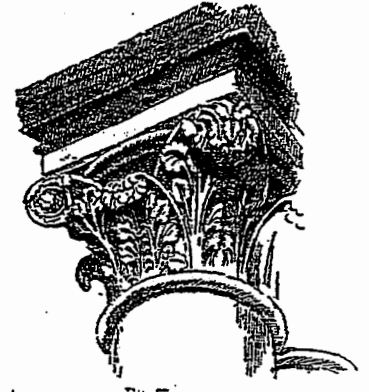
Technological conferencing

The Brown Act has been amended in 1994, 1997 and 1998 to allow local agencies to use information age technologies to conduct meetings.¹³

The Brown Act now specifically allows a legislative body to use any type of teleconferencing to receive public comment, testimony, to deliberate or conduct a closed session.¹⁴

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."¹⁵ In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following specific requirements:¹⁶

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body shall participate from locations within the local agency's jurisdiction.
- Additional teleconference locations may be made available for the public.



The Brown Act has been amended to allow local agencies to use information age technologies to conduct meetings.

Chapter 2: Meetings

- Each teleconference location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at each teleconference location.
- Each teleconference location must be accessible to the public.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

The use of teleconferencing to conduct a legislative body meeting presents a variety of new issues beyond the scope of this booklet to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.¹⁷

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is to:

- ◆ Comply with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the local agency is a party.
- ◆ Inspect real or personal property, which cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property.
- ◆ Participate in multiagency meetings or discussions, however, such meetings must be held within the boundaries of one of the participating agencies, and all involved agencies must give proper notice.
- ◆ Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or at its principal office if that office is located outside the territory over which the agency has jurisdiction.
- ◆ Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

- ◆ Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- ◆ Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.¹⁸

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.¹⁹ A board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.²⁰

Finally, if a fire, flood, earthquake or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media which have requested notice of meetings must be notified of the designation through the most rapid means of communication available.²¹

Notes:

1. California Government Code section 54952.2(a)
2. California Government Code section 54952.2(b)
3. California Government Code section 54952.2(c)
4. California Government Code section 54952.2(c)(4)
5. California Government Code section 54952.2(c)(6)
6. "The Brown Act" California Attorney General, 1994, p. 9
7. *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal. App. 3d 95, 214 Cal. Rptr. 561
8. *Common Cause v. Stirling* (1983) 147 Cal. App. 3d 518, 195 Cal. Rptr. 163
9. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330
10. California Government Code section 54957.5(a)
11. "The Brown Act" California Attorney General, 1994, p.12
12. California Government Code section 54952.2; 43 Op. Cal. Att'y Gen. 36 (1964)
13. California Government Code section 54953(b)
14. California Government Code section 54953(b)(1)
15. California Government Code section 54953(b)(4)
16. California Government Code section 54953
17. California Government Code section 54954(b)
18. California Government Code section 54954(b)(1)-(7)
19. California Government Code section 54954(c)
20. California Government Code section 54954(d)
21. California Government Code section 54954(c)

Before teleconferencing a meeting, legal counsel for the local agency should be consulted.

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THE LEGISLATIVE BODY OF A LOCAL AGENCY...

What is the "...legislative body of a local agency...?"

The Brown Act defines "legislative body" broadly¹ to include:

The governing body of a local agency or any other local body created by state or federal statute, such as an air pollution control district or housing authority.²

Advisory committees, such as planning commissions and other subsidiary bodies. Also covered are citizen volunteer groups, task forces, and "blue ribbon committees" created by formal action of the governing body.

However, there is an exception for advisory committees consisting solely of less than a quorum of the legislative body (see discussion under "What is not a 'legislative body' for purposes of the Brown Act?" below).³

A subset of the advisory committee is the "unitary" body. The less-than-a-quorum exception for advisory committees can be used by two or more bodies to create an entirely separate advisory body which may or may not be subject to the Brown Act.

In one case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a "unitary body" subject to the Brown Act. Had the two committees remained separate, and met only to exchange information, they would have been exempt from the Brown Act.⁴ (See discussion of *ad hoc* committees below.)

The prudent assumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

◆ Standing committees, which have either: 1) a continuing subject matter jurisdiction or 2) a meeting fixed by charter, ordinance, resolution, or other formal action of the legislative body.⁵ Standing committees comprised of less than a quorum of the governing body are covered by the Brown Act. For example, if a governing

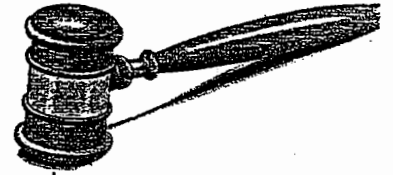
body creates long-term committees on budget and finance, or public safety, those are standing committees subject to the Brown Act.

- ◆ Any private organization created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity is covered.⁶ This includes nonprofit corporations created by local agencies. However, if a local agency contracts with a private firm for a service (for example, data processing or providing food services), the private firm is not covered by the Brown Act. Other private organizations receiving public funds are subject to the Brown Act if two elements are present: (1) receipt of public money from a local agency and (2) the presence on the organization's governing body of a member of the legislative body appointed as a full voting member by the local agency.⁷ However, if a member of a legislative body sits on the board of a private organization as a private citizen rather than in his or her official capacity, the board will not be subject to the Brown Act.⁸

Suppose a chamber of commerce is funded in part by a city and the mayor sits on the chamber's board of directors. If the mayor was appointed to that position by the city council, the chamber is subject to the Brown Act and must hold open and public meetings. If the chamber independently appoints the mayor to its governing board, or if the mayor attends chamber meetings only in an advisory capacity, the chamber is probably not subject to the Brown Act.

Another is an auxiliary organization created to run a community college bookstore or cafeteria. (However, if the college *contracts* with a private firm to operate its bookstore or provide food services, the firm is not covered by the Brown Act.)

- ◆ Special district hospital boards. A lessee assuming "material authority" over a special district hospital is not covered by the Brown Act.⁹ However, this provision only applies to leases created after January 1, 1994.
- ◆ Newly elected members of legislative bodies.



Chapter 3:
Legislative Bodies

Individual decision
makers are not covered
by the Brown Act.

In 1994, the Brown Act was extended to cover newly-elected members of legislative bodies who have not yet assumed office.¹⁰ This amendment requires newly elected individuals to conform their conduct to the requirements of the Brown Act. For purposes of enforcement, these persons are to be treated as if already in office. Thus, meetings between incumbents and newly-elected members could constitute a majority subject to the Brown Act. Even a meeting between two outgoing members and their successors would violate the law.

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

- ◆ An *ad hoc*, advisory committee composed solely of less than a quorum of the legislative body is exempted from the Brown Act.¹¹ The exception covers advisory committees that are *ad hoc* in nature — meaning that they serve a limited or single purpose, are not perpetual, and are to be dissolved once their specific task is completed. An example would be an advisory committee composed of less than a quorum created to interview candidates for a vacant position.

It can be difficult to determine whether a committee falls into the category of a standing committee or an exempt ad hoc committee. Suppose a subcommittee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration? Is it a standing committee or an exempt ad hoc committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the group persists long enough to have "continuing jurisdiction."

- ◆ Committees not created by formal action of the legislative body are not covered. For example, groups advisory to a single decision-maker appointed by a city manager or single city council member or otherwise not created by formal action of the legislative body are not covered by the Brown Act.¹² It is thus

possible that a committee advising to a county superintendent of schools would not be covered by the Brown Act. However, same committee, if created by formal action of the county board of education, would be covered.¹³

- ◆ Individual decision makers are not covered by the Brown Act. For example, an employee's administrative hearing with a manager regarding discipline is not a meeting.¹⁴
- ◆ County central committees of political parties are also not Brown Act bodies.¹⁵

Notes

1. California Government Code sections 54951 and 54952; *Torres v. Board of Commissioners* (1979) 89 Cal. App. 3d 545, 152 Cal. Rptr. 506
2. California Government Code section 54952(a)
3. California Government Code section 54952(b); 79 Op. Cal. Att'y Gen. 69 (1996)
4. *Joiner v. City of Sebastopol* (1981) 125 Cal. App. 3d 799, 178 Cal. Rptr. 299
5. California Government Code section 54952(b)
6. California Government Code section 54952(c)(1)(A)
7. California Government Code section 54952(c)(1)(B); see also *International Longshoremen's and Warehousemen's Union v. Los Export Terminal* (1999) 69 Cal. App. 4th 287, 81 Cal. Rptr. 2d
8. 67 Op. Cal. Att'y Gen. 487 (1984)
9. California Government Code section 54952(d)
10. California Government Code section 54952.1
11. California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal. 4th 821, 25 Cal. Rptr. 2d 148
12. 56 Op. Cal. Att'y Gen. 14 (1973)
13. 56 Op. Cal. Att'y Gen. 14 (1973)
14. *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal. App. 3d 870, 105 Cal. Rptr. 855
15. 59 Op. Cal. Att'y Gen. 162 (1976)

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"SHALL BE OPEN AND PUBLIC . . ."

There are two essentials for an open and public meeting. One is effective notice; whether a meeting is open or not is academic if no one knows about it. The other is an agenda which equately describes the items to be considered.

Every meeting of the legislative body of a local agency—including advisory committees, commissions or boards, as well as standing committees of legislative bodies—must have public notice and a written agenda. The specifics vary by type of meeting.

Regular meetings

Legislative bodies must set the time and place for their regular meetings by ordinance, resolution, bylaws or similar formal rule for conducting business. Advisory committees or standing committees may but need not require regular meetings by their own rules. Meetings of these latter two categories of bodies for which an agenda posted 72 hours in advance are considered a regular meetings.¹

An agenda must be posted at least 72 hours before a regular meeting in a location "freely accessible to members of the public." It shall state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."²

Brief descriptions of agenda items were first required in 1987. A letter placed in the *Senate Daily Journal* explained that the intent was for agendas to "contain sufficient descriptions . . . to enable members of the general public to determine the general nature of subject matter of each agenda item, so that they may seek further information on items of interest. It is not the purpose of this bill to require agendas to contain the degree of information required to satisfy constitutional due process requirements." There remained some disagreement over the detail necessary in an agenda. The 1994 amendments revised the section to specify that a brief description "generally need not exceed 20 words."³

With three exceptions (see the end of this chapter), no action or discussion can take place on an item not on the posted agenda.⁴ However, there can be brief responses to questions, or some

other limited, routine comments, also as discussed at the end of this chapter.

Special meetings

The presiding officer or a majority of a legislative body, including an advisory or standing committee, may call a special meeting at any time. For the majority to act, there is implied authority for them to communicate to determine if they want to call a special meeting.

Written notice must be sent, and received by, each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station which has requested such notice in writing.⁵

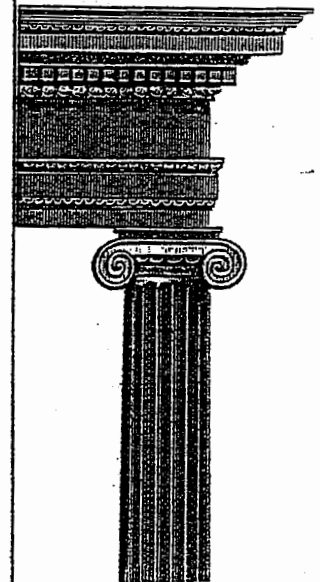
The notice must state the time and place of the meeting, and all business to be transacted or discussed. It must be posted at least 24 hours prior to the special meeting in a site freely accessible to the public. Media notice must be delivered by personal delivery or any other means which ensures receipt, at least 24 hours before the time of the meeting. The body cannot consider business not in the notice.⁶

Adjourned meetings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment. If no time is stated, the meeting is continued to the hour for regular meetings. Less than a quorum may so adjourn a meeting, and if no member of the legislative body is present, the clerk or secretary may adjourn the meeting.⁷ If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.⁸ A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.⁹

Closed sessions

Part or all of a regular or special meeting, or one which has been adjourned, may be closed to the public under special conditions (discussed in Chapter 6). But notice is still required, even if no action is contemplated.¹⁰



Chapter 4: Notices and Agendas

The Brown Act provides a series of "safe harbor" examples—so called because descriptions that substantially comply with them cannot be challenged as not accurately describing the action. (These examples appear in Section 54954.5 in the text at the end of this guide.)

The legislative body in a closed session can consider only matters covered in its agenda descriptions. After closed session, the legislative body must reconvene to open session and may be required to disclose actions taken. The requirement for a public report of action varies depending largely on whether the action of the agency renders the matter final or whether action of a third party is necessary. When announcements are required, they may be made at the location of the closed session announced in the agenda, or where the agency holds its open sessions, as long as the public is allowed to be present.¹¹

Continued hearings

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.¹²

Emergency meetings

An agency can hold an emergency meeting when prompt action is needed due to the actual or threatened disruption of public facilities. An "emergency situation" exists if the legislative body determines a work stoppage, crippling disaster, or other activity severely impairs public health, safety or both.¹³

The special meeting provisions apply to emergency meetings, except for the 24-hour notice. News media which have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However the news media must be notified as soon as possible of the meeting and any action taken.

The legislative body may not meet in closed session during emergency meetings.

Minutes of emergency meetings, a list of

persons notified or attempted to be notified, a copy of the roll call vote, and any actions taken must be posted for a minimum of 10 days in a public place as soon after the meeting as

It behooves the news media to make sure requests are on file for notification of special or emergency meetings. The written requests should also be periodically renewed—especially if phone numbers or addresses have been changed. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings—although notification may be advisable in any event to avoid controversy.

Mailed agenda upon written request

The legislative body, or its designee, shall mail a copy of the agenda or copies of all the documents in the agenda packet, to any person who has filed a written request for such materials. The mailed copies of the agenda, or agenda packets, shall be mailed at the time the agenda is posted.

A request for notice is valid for one calendar year and renewal requests must be filed January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive agenda does not constitute grounds for initiation of actions taken at the meeting.¹⁵

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions,¹⁶ however, they are generally consistent with the Brown Act. An item is apparently void if not posted.¹⁷ A school district must also adopt regulations to make sure the public can place matters affecting district business on meeting agendas, and to address the board on those items.¹⁸

Notice requirements for tax or assessment meetings and hearings

The Brown Act contains specific procedures a city, county, special district or joint powers authority must take before adopting any new or increased general tax or assessment.¹⁹

At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 notice of a public hearing at which public testimony may be given before the legislative body

The legislative body may not meet in closed session during emergency meetings.

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oposes to act on the tax or assessment. The agency may recover the reasonable costs of the meetings, hearings, and notice.²⁰ The Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of articles III C or XIII D of the Constitution,²¹ which was amended by Proposition 218 in 1996.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda.²²

When a majority decides there is an "emergency situation" (as defined for emergency meetings).

When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted."

When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

As seen in the above-described instances, the exceptions are narrow. The first two require a specific determination by the legislative body. That determination can be challenged in court, and if unsubstantiated can lead to invalidation of an action.

The second exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A "new" need does not arise because staff forgot to put an item on the agenda, or because an applicant missed a deadline.

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back or to place a matter of

business on the agenda for a subsequent meeting (subject to its own rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.²³ However, caution should be used to avoid any discussion or action on such items.

"I'd like a two-thirds vote of the board, so we can go ahead and act on phase two of the East Area Project," said chairman Jones.

"It's not on the agenda. But we learned two days ago that we're ahead of schedule—believe it or not—and I'd like to keep it that way. Do I hear a motion?"

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled citizen. If possible, the prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go ahead tonight, even though it's not on the agenda."

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two step process:

- *First, make the finding that there is an immediate need to take action that arose since the posting of the agenda and the matter is then "placed on the agenda."*
- *Second, discuss and act on the item.*

Notes

1. California Government Code section 54954(a)
2. California Government Code section 54954.2(a)
3. California Government Code section 54954.2(a)
4. California Government Code section 54954.2(a)
5. California Government Code section 54956
6. California Government Code section 54956
7. California Government Code section 54955
8. California Government Code section 54954.2(b)(3)
9. California Government Code section 54955
10. California Government Code section 54957.7(a)
11. California Government Code section 54957.7(b) and (c)
12. California Government Code section 54955.1
13. California Government Code section 54956.5
14. California Government Code section 54956.5
15. California Government Code section 54954.1
16. California Education Code section 35144 and 35145
17. *Carlson v. Paradise Unified School District* (1971) 18 Cal. App. 3d 196, 95 Cal. Rptr. 650
18. California Education Code section 35145.5
19. California Government Code section 54954.6
20. California Government Code section 54954.6(g)
21. California Government Code section 54954.6(a)(1)
22. California Government Code section 54954.2(b)
23. California Government Code section 54954.2(a)

Chapter 4: Notices and Agendas

The Brown Act generally prohibits any action or discussion of items not on the posted agenda.



“...ALL PERSONS SHALL BE PERMITTED TO ATTEND...”

A number of the Brown Act's provisions protect the public's right to attend and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise “fulfill any condition precedent” to attending a meeting. Any attendance list, questionnaire or other document circulated at a meeting must clearly state that its completion is voluntary, and that all persons may attend whether or not they fill it out.¹

No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry or sex, or which is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.² (This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.³)

Action by secret ballot, whether preliminary or final, is flatly prohibited.⁴

There can be no “semi-closed” meetings, which some members of the public are permitted to attend as spectators while others are not; meetings are either open or closed.⁵

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.⁶

Finally, no notice, agenda, announcement or report required by the Brown Act need identify a victim of sexual misconduct or child abuse, unless the identity of the person has been publicly disclosed.⁷

“Are there any comments from the public?” asked the Mayor during the city council meeting.

A man stepped forward from the audience, and the Mayor continued, “Please give us your name and address for the record.”

“I don't have to, and I'd rather not,” came the reply.

“You don't have to give us your name to attend the meeting,” said the Mayor, “but you do if you want to testify.”

It is unclear whether members of the public can be required to provide their names, addresses or other information as a condition to participating in (as opposed to attending) a meeting. If such information is relevant and necessary to the subject matter of a public hearing or evidentiary proceeding, it probably can be required. On the other hand, it seems less likely that such information can be required as a prerequisite to addressing the legislative body during oral communication on general matters within the subject matter jurisdiction of the agency.⁸

Records and recordings

The public has the right to review agendas and other writings distributed to a majority of the legislative body. Except for privileged documents, those materials are public records and must be made available.⁹ A fee or deposit may be charged for a copy of a public record.¹⁰

To ensure action is not taken on documents not available for public review, writings must be made public:

- ◆ At the meeting if prepared by the local agency or a member of its legislative body, or
- ◆ After the meeting if prepared by some other person.

A fee or deposit may be charged for a copy of a public record.

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Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is also subject to the Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.¹¹ The agency may impose its ordinary charge for copies.¹²

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting, absent a reasonable finding by the legislative body that recorders or cameras would persistently disrupt proceedings.¹³

A local agency cannot prohibit or restrict the public broadcast of its open and public meetings without reasonable finding that the noise, illumination or obstruction of view will be a "persistent" disruption.¹⁴

Finally, governing bodies can go beyond these minimal standards to require greater access to their meetings and to those of their appointed bodies.¹⁵

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.¹⁶

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But, the Brown Act provides no immunity for defamatory statements.¹⁷

The legislative body may adopt reasonable regulations, including time limits, on public comments.¹⁸ Such regulations should be enforced fairly and without regard to speakers' viewpoints.

The public need not be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of

members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item but need not allow members of the public an opportunity to speak on nonagendized items.¹⁹

Reactive discussion

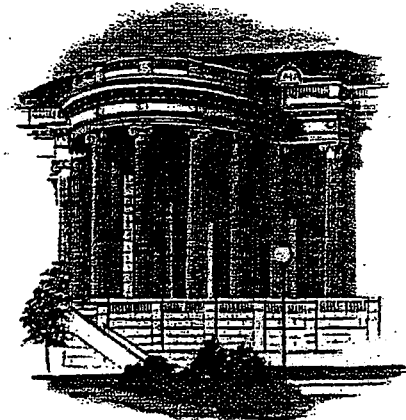
The public can talk about anything, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

The Brown Act specifically allows members of the legislative body or its staff to "briefly respond" to comments or questions from members of the public.²⁰ Other brief or routine comments may also be made, as mentioned at the end of the previous chapter.

Notes

1. California Government Code section 54953.3
2. California Government Code section 54961(a)
3. California Government Code section 54952.2(c)(2)
4. California Government Code section 54953(c)
5. 46 Op. Cal. Att'y Gen. 34 (1965)
6. California Government Code section 54957.9
7. California Government Code section 54961(b)
8. California Government Code section 54954.3(b)
9. California Government Code section 54957.5
10. California Government Code section 54957.5
11. California Government Code section 54953.5(b)
12. California Government Code section 54957.5(c)
13. California Government Code section 54953.5(a)
14. California Government Code section 54953.6
15. California Government Code section 54953.7
16. California Government Code section 54954.3(a)
17. California Government Code section 54954.3(c)
18. California Government Code section 54954.3(b); 75 Op. Cal. Att'y Gen. 89 (1992)
19. California Government Code section 54954.3(a)
20. California Government Code section 54954.2(a)

The legislative body
may adopt reasonable
regulations, including time
limits, on public comments.



“...EXCEPT AS OTHERWISE PROVIDED...”

The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. It is not enough that a subject is sensitive, embarrassing or controversial. Without specific authority in the Brown Act for a closed session, a matter must be discussed in public. As an example, a board of police commissioners cannot generally meet in closed session, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.¹

Meetings of a legislative body are either open or closed. A legislative body cannot invite selected members of the public to attend a meeting while excluding others.² Closed sessions should involve only the members of the body, plus any additional support staff required, legal counsel, a supervisor involved in a disciplinary matter, consultants, a labor negotiator or any witnesses in the case where the legislative body is hearing complaints and charges against an employee. Individuals who do not have an official role in advising the legislative body on closed session subject matters should be excluded from closed session discussions.³

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind. In this chapter, the grounds for convening a closed session are called “exceptions,” because they are exceptions to the general rule that meetings must be conducted openly.

Agendas and reports

The legal authority for a closed session must be included on the posted agenda, with the same kind of brief description required of a regular meeting item.

The Brown Act supplies a series of fill-in-the-blank samples, which provide a “safe harbor” from legal attacks. These samples cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims,

threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional drug cases, hospital boards of directors, and medical quality assurance committees. (For details, see section 54954.5 of the Brown Act text at the end of this guide.)

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.⁴

Following a closed session, if action is taken, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session.⁵ The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

In addition, if there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.⁶

A confidential “minute book” may be kept to record actions taken at closed sessions.⁷ If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict-of-interest.⁸ Minute books must also be disclosed to a court if a lawsuit claims an open meeting violation. Minutes of an improper closed session are not confidential.

Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions, and legislative bodies do well to

Meetings of a legislative body are either open or closed.

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resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

Personnel

Meetings can be closed for "personnel matters"—a term used more for convenience than for accuracy. The text of the Brown Act never mentions "personnel."

The law instead says a meeting can be closed "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."⁹ The purpose of the personnel exception is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.¹⁰

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her, and has the right to have the specific complaints and charges discussed in a public session. If the employee is not given notice, any disciplinary action is null and void.¹¹ However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation, as distinguished from consideration of specific complaints and charges made against an employee. In recent opinions, the Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.¹² The opinions say that the Brown Act's notice and hearing requirements apply when the legislative body is reviewing evidence of specific complaints and charges and adjudicating conflicting testimony offered as evidence.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, department head or chief engineer. An example of the latter is a legal counsel hired on contract to act as local agency attorney.

Elected officials, appointees to the governing

body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.¹³ Action on individuals who are not "employees" must also be public—including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

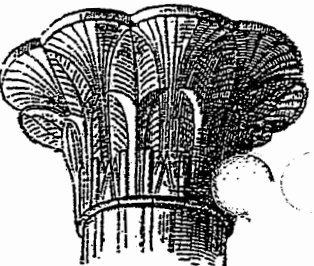
The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter.)

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session. Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.¹⁴ However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.¹⁵

"I have some important news to announce," said board chairman Jones. "We've decided to terminate the contract of the chief executive, effective immediately. The board has met in closed session, and we've negotiated six months' severance pay."

"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."

This may be an improper use of the personnel closed session. Any action on individual compensation must be taken in open session. However, if an employee has filed a claim or had threatened litigation the governing body may hold a potential litigation closed session and approve a severance package in connection with a settlement agreement.



The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay.

Chapter 6:
Closed Sessions

Protection of the attorney/client privilege cannot by itself be the reason for a closed session.

Pending litigation

There is an attorney/client relationship, and legal counsel may use it for privileged written and verbal communications—outside of meetings—to members of the legislative body. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.¹⁶

The Brown Act expressly authorizes closed sessions to discuss what is considered “pending litigation.” The rules that apply to holding a pending litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in pending litigation.¹⁷ While the issue is not absolutely clear, the Attorney General believes that if the agency’s attorney is not a participant, a “pending litigation” closed session cannot be held.¹⁸ In any event, local agency officials should always consult the agency’s attorney before placing this type of closed session on the agenda, in order to be certain that it is being done properly.

“Litigation” that may be discussed in closed session includes the following three types of matters:

- (1) Existing litigation,
- (2) Threatened or anticipated litigation, and
- (3) Potential litigation.

Existing litigation

Existing litigation includes any adjudicatory proceedings, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops or to consider alternatives for resolution of the case.

Threatened or anticipated litigation against the local agency

Closed sessions are authorized for legal

counsel to inform the legislative body of specific facts and circumstances which suggest that the local agency has significant exposure to litigation. The Brown Act lists six separate categories of such facts and circumstances. The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff.

Potential litigation initiated by the local agency

A closed session may be held under the pending litigation exception when the legislative body seeks legal advice on whether to protect the agency’s rights and interests by initiating litigation.

In certain cases, the circumstances and facts justifying the closed session must be publicly noticed on the agenda or announced at an open meeting. Before holding a closed session under the pending litigation exception, the legislative body must publicly state which of the three basic situations apply. It may do so simply by making a reference to the posted agenda. Certain actions must be reported in open session at the same meeting following the closed session.

Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person. Each agency attorney is aware of and should make other disclosures that may be required in specific instances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange or lease of real property by or for the local agency. A “lease” includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body’s negotiator or negotiators on price and terms of payment.¹⁹

The agency’s negotiator may be a member of the legislative body itself. Prior to the closed session, the legislative body must identify its negotiator, the real property which the negotiations may concern and the names of the persons with whom its negotiators may negotiate.²⁰

After real estate negotiations are concluded, the approval of the agreement and the substance of the agreement must be reported. If its own approval makes the agreement final, the body must

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report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval as soon as informed of it, as well as the substance of the agreement, upon the inquiry of any person.

"Our population is exploding, and we have to think about new school sites," said Board Member Baker.

"Not only that," interjected Board Member Charles, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member Doe. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites—which must be identified at an open and public meeting. However, a legislative body can make a final decision on real property in a closed session.

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,²¹ on employee salaries and fringe benefits for both union and non-union employees; for represented employees, it may also consider working conditions which by law require negotiation. These sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.²²

The approval of an agreement concluding labor negotiations with represented employees

must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.²³ The labor sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees. For purposes of this prohibition, an "employee" includes an officer or an independent contractor who functions as an officer or an employee. Independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

Labor negotiations—school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Act:

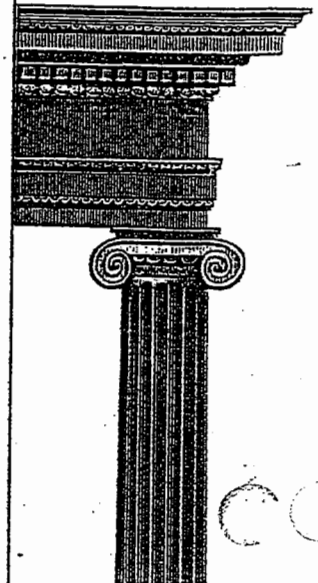
- (1) a negotiating session with a recognized or certified employee organization;
- (2) a meeting of a mediator with either side;
- (3) a hearing or meeting held by a fact finder or arbitrator; and
- (4) a session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.²⁴

Public participation under the Rodda Act also takes another form.²⁵ All initial proposals of both sides must be presented at public meetings and are public record. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.²⁶ The final vote must be in public.

Other Education Code exceptions

Student disciplinary meetings by boards of school districts and community college districts are governed by the Education Code. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing

Prior to the closed session, the legislative body must hold a and public session in which it identifies its designated representatives.



Chapter 6: Closed Sessions

would reveal personal, disciplinary or academic information about students contrary to state and federal pupil privacy law. The pupil's parent or guardian may request an open meeting.

Final action concerning kindergarten through 12th grade students must be taken at a public meeting, and is a public record.²⁷ In the case of community colleges, only expulsions need be made public.

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.²⁸ Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.²⁹

Grand jury testimony

A legislative body, including its members as individuals, may specifically testify in private before a grand jury, either individually or as a group.³⁰ Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act, since the body would not be meeting to make decisions or reach a consensus on issues within the body's subject matter jurisdiction.

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license.

If the body as a result decides to deny the license, the applicant may withdraw the application. In that case, no record is to be kept of the decision and all elements of the closed session are confidential.

If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.³¹

Public security

Legislative bodies can meet in closed session to discuss matters posing a threat to the security of public buildings, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with either the Attorney General, district attorney, sheriff or chief of police, or their deputies.³² Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional drug law enforcement agency

A joint powers agency formed to provide drug law enforcement services to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.³³

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.³⁴

- ◆ One is to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
- ◆ The other allows district or municipal hospitals to hold closed sessions to discuss "reports involving trade secrets"—provided no action is taken.

A trade secret is defined as information which is not generally known to the public or competitors and which (1) "derives independent economic value, actual or potential" by virtue of its restricted

Attendance by the entire legislative body before grand jury would not constitute a closed session meeting under the Brown Act.

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knowledge, (2) is necessary to initiate a new hospital service or program or facility, and (3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.³⁵

Maintaining the confidentiality of closed session discussions

The Brown Act lacks guidance on whether remedies are available to prohibit or punish closed session "leaks." The law remains unsettled in this area. Agency attorneys and the Attorney General believe that officials have a fiduciary duty to protect the confidentiality of closed session discussions. This duty, of course, must give way to the obligation to disclose improper matters or discussions which may come up in closed sessions.

The Attorney General has issued an opinion that it is "improper" for officials to publicly disclose information received during a closed session regarding pending litigation, though he also concludes that a local agency may not go so far as to adopt an ordinance criminalizing public disclosure of closed session discussions.³⁶ The opinion includes a list of sanctions that could apply to a person who discloses closed session information, including

- ◆ an injunction barring the person's attendance at future closed sessions,
- ◆ an injunction against future public disclosures, and
- ◆ a formal accusation filed against the person for willful or corrupt misconduct in office.³⁷

The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.³⁸ This holding supports the notion that there is a strong interest in protecting the confidentiality of proper and lawful closed session discussions.

"I want the press to know that I voted in closed session against settlement and will continue to do so as long as these discussions progress," said Council Member Arnold.

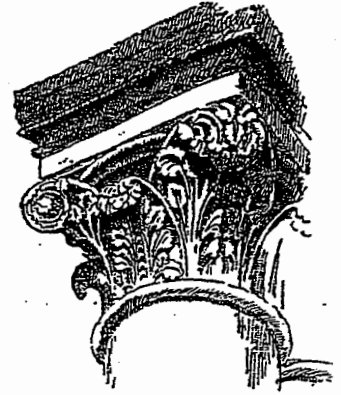
"Don't settle," reveals Council Member Baker to the plaintiff, over coffee. "The city's offer coming your way is not our bottom line."

The Brown Act expressly permits—in fact, requires—that final votes taken in closed session be reported publicly.³⁹ Disclosure of other closed session information is risky, at best. The only completely safe way to divulge closed session discussions is pursuant to a court order issued under section 54960(a) of the Brown Act. That section provides a remedy to a member of a legislative body to determine by court order whether the legislative body's efforts to discourage the official's disclosure of information is passes muster under federal or state law.

Notes

1. 61 Op. Cal. Att'y Gen. 220 (1978)
2. 46 Op. Cal. Att'y Gen. 34 (1965)
3. 98 Op. Cal. Attorney Gen. 1011 (1999)
4. California Government Code sections 54956.9 and 54957.7
5. California Government Code section 54957.1(a)
6. California Government Code section 54957.1(b)
7. California Government Code section 54957.2
8. *Hamilton v. Town of Los Gatos* (1989) 213 Cal. App. 3d 1050, 261 Cal. Rptr. 888
9. California Government Code section 54957
10. 63 Op. Cal. Att'y Gen. 215 (1980)
11. California Government Code section 54957
12. 78 Op. Cal. Att'y Gen. 218 (1995); *Furtado v. Sierra Community College* (1998) 68 Cal. App. 4th 876, 80 Cal. Rptr. 2d 589; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal. App. 4th 87, 82 Cal. Rptr. 2d 452
13. California Government Code section 54957
14. *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal. App. 4th 1165, 79 Cal. Rptr. 2d 649
15. California Government Code section 54957.1(a)(5)
16. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330
17. California Government Code section 54956.9
18. "Open Meeting Laws," California Attorney General, 1989, p. 41
19. California Government Code section 54956.8
20. California Government Code section 54956.8
21. California Government Code section 54957.6
22. 57 Op. Cal. Att'y Gen. 209 (1974)
23. California Government Code section 54957.1(a)(6)
24. California Government Code section 3549.1
25. California Government Code section 3540
26. California Government Code section 3547
27. California Education Code section 48918
28. California Education Code section 72122
29. California Education Code section 60617
30. California Government Code section 54953.1
31. California Government Code section 54956.7
32. California Government Code section 54957
33. California Government Code section 54957.8
34. California Government Code section 54962
35. California Health and Safety Code section 32106
36. 76 Op. Cal. Att'y Gen. 289 (1993)
37. 80 Op. Cal. Att'y Gen. 231 (1997)
38. *Kleitman v. Superior Court* (1999) 74 Cal. App. 4th 324, 327, 87 Cal. Rptr. 2d 813, 815
39. California Government Code section 54957.1

Chapter 6: Closed Sessions



There is a strong interest in protecting the confidentiality of proper and lawful closed session discussions.

Chapter 7: Remedies

The Brown Act had no penalties or methods for enforcing compliance when first enacted. However, subsequent amendments have put teeth into enforcement. Specifically, the Brown Act was amended in 1961 to make violations a crime, and to authorize civil action to stop or prevent violations. A provision went into effect in 1987 permitting invalidation of some actions taken in violation of the law. The 1994 amendments extended the time limits for starting an invalidation action, and altered the definition of a misdemeanor violation.

As discussed below, persons wishing to invoke the Brown Act's civil remedies must first provide the legislative body the opportunity to cure its actions.

Even with safeguards such as posting a specific agenda, closed session parameters, and new remedies to enforce these provisions, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. In other words, compliance ultimately requires a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any person, including the district attorney, may seek to invalidate a legislative body's actions that violate the Brown Act. Not all actions can be challenged; and in any case the legislative body has a chance to cure or correct its actions.¹

Only actions taken in violation of certain provisions of the Brown Act may be invalidated. Invalidation is limited to actions which violate the following sections of the Brown Act: Section 54953 (the basic open meeting provision); Sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); and 54956 (special meetings).

Even violations of these provisions cannot be invalidated if they involve the following types of actions:

- those in substantial compliance with these provisions;

- those involving sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- those connected with the collection of any tax, or
- those in which the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.

The challenger to the action must also show prejudice as a result of the alleged violation.²

Violations of sections not listed here cannot give rise to invalidation actions, but are subject to the other remedies.³

Before filing a court action, the aggrieved party must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action, the nature of the alleged violation, and the "cure" sought, and it must be sent within 90 days of the alleged violation. (However, the time limit is 30 days if the action was taken in open session but in violation of Section 54952.2, which defines "meetings.")⁴

The legislative body then has up to 30 days to cure and correct its action. If it does not act, any law suit must be filed within the next 15 days.

Despite its limitations, the invalidation language means legislative bodies should be even more careful not to violate the Brown Act. Challenges are likely to come from the general public and news media as well as from unexpected quarters—such as disgruntled business people. Some violations, such as inadequate agenda descriptions or posting, may be relatively easy to cure and correct. Other violations—such as inappropriate closed sessions—may be more difficult to correct.

A legislative body should cure and correct a challenged action whenever feasible. Two items should be placed on the next agenda, the first for a decision on whether to correct or cure an action, and the second for consideration of the action if the answer to the first item is "yes." The recommended action in the latter case is not to rescind a previous action but to supersede it. The record of the earlier meeting can be incorporated, but new public testimony should be allowed.

A legislative body should cure and correct a challenged action whenever feasible.

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Civil action

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions. The court may later review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant sections.⁵

Costs and attorney's fees

Someone from the agency who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. However, the award is only against the local agency and not the individual members of the legislative body. A local agency may be awarded court costs and attorney's fees if the court finds the law suit was clearly frivolous and lacking in merit.⁶

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.⁷

A criminal violation has two components. The first is that there must be an overt act—a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.⁸

"Action taken" is defined elsewhere as not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.⁹ If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as

final decision.¹⁰ In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act—not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.¹¹ As with other misdemeanors, the filing of a complaint is up to the district attorney.

Informal resolution

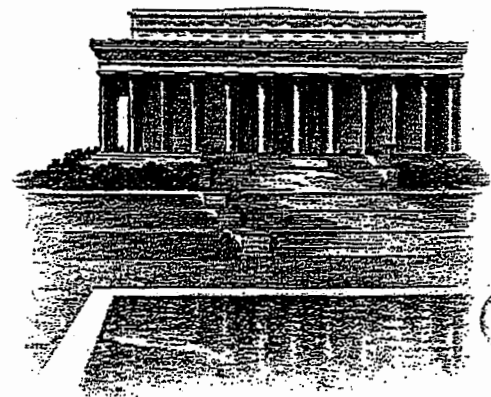
Public agencies always have the opportunity to re-notice and re-hear items of significant public interest. Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy citizens fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down.

The best solution is prevention.

The best solution is prevention.

Notes

1. California Government Code section 54960.1
2. *Caban v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547, 556, 35 Cal. Rptr. 2d 782, 786
3. California Government Code section 54960.1(a)
4. California Government Code section 54960.1, subs. (b) and (c)(1)
5. California Government Code section 54960
6. California Government Code section 54960.5
7. California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
8. California Government Code section 54959
9. California Government Code section 54952.6
10. 61 Op. Cal. Att'y Gen. 283 (1978)
11. California Government Code section 54959



Chapter 8: Beyond the Law

This guide has focused not only on the Brown Act, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices for itself and its subordinate committees and bodies that are more stringent than the law itself requires. Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act is insufficiently precise. As with any other significant policy, public comment should be solicited.

A local policy could reflect:

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

Many agencies may have specific constituencies with other expectations. An explicit and comprehensive public meeting and information policy, especially if reviewed periodically could be an important element in maintaining or improving public relations.

Such a policy exceeds the absolute requirements of the law—but if the law were enough this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. It may be well for an agency to go beyond the law, to look at its unique circumstances and determine if there is a better way to prevent potential problems.

At the very least, local agencies need to think about how their agendas are structured, and to work at making compliance with the Brown Act easier. They need to plan carefully to make sure public participation fits smoothly into the process.

The Brown Act should be neither an excuse for bureaucratic obfuscation nor a mechanism for public filibusters. And it should not preclude efficient and orderly meetings.

The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for the maximum degree of openness in local government, yet should allow government to function responsively and productively.

On the one hand, there must be adequate notice of what discussion and action is to occur during a meeting; on the other there must be a normal degree of spontaneity in the dialogue between elected officials and their constituents.

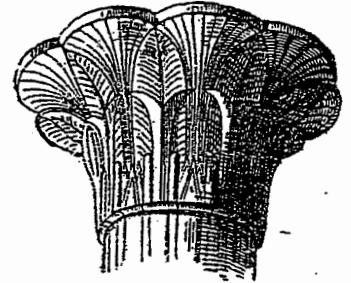
The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

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



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- The agency's web-site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act? *Yes, because it is a technological device that may serve to allow for the development of a collective concurrence as to action to be taken.*
2. A member of the legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting? *No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.*
 3. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question? *Yes, because the incumbents should not be constrained from participating in the political process as any other candidate.*
 4. The entire legislative body intends to travel to Sacramento to testify against a bill before the Senate Local Government Committee. Must this activity be noticed as a meeting of the body? *No, because the members are attending and participating in an open meeting of another governmental body to which the public may attend.*
 5. The members in question #4 then proceed upstairs to the office of their local assemblyperson to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public? *Yes, because the entire body may not meet behind closed doors except for proper closed sessions.*
- A member on vacation desires to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she? *She probably may participate, but she may not vote because she is not in a noticed and posted teleconference location.*
7. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference at city hall in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal? *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken by the council and the press conference is open to the public, it seems harmless.*
 8. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go? *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be able to attend.*
 9. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors? *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*
 10. A member of the legislative body informally establishes an advisory committee of five residents to advise her on issues as they arise. Is this committee covered by the Brown Act? *No, because the committee has not been established by formal action of the legislative body.*
 11. On the morning following the election to a five-member legislative body of a local agency, the three successful candidates, none incumbents, meet for a celebratory breakfast. Does this violate the Brown Act? *It might, and absolutely would if the conversation turns to*



agency business. Even though not officially sworn in, the Brown Act applies to these individuals. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.

12. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she? *She may attend, but only as an observer; she may not participate.*
13. The agenda for a regular meeting of the legislative body contains the following item of business under New Business:

"Consideration of a report regarding traffic on Eighth Street."

Is this description adequate? *If it is, it is barely adequate. A better description would provide the reader with some idea of what the report is about, and what is being recommended.*

14. The agenda always includes an opportunity for the "Chief Executive Officer's Report," during which time the officer provides a brief report on notable topics of interest, none of which are listed on the agenda. Is this permissible? *Yes, as long as it does not result in legislative body discussion or action.*
15. Must the legislative body allow members of the public to show videos during the "audience participation" part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit? *Probably, though the agency is under no obligation to provide equipment.*

16. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during audience comments? *No, as long as the criticism is to job performance.*

17. During the audience comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech? *No, for Brown Act purposes, the speech is relevant to the governing of the agency and an implicit criticism of the incumbents.*

18. May the legislative body agree to settle a lawsuit in a properly noticed closed session, without placing the settlement agreement on an open session agenda for public approval? *Yes, but the settlement agreement is a public document and must be disclosed on request.*

19. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer? *No, attendance in closed sessions is reserved exclusively to the agency advisors.*

20. Must 24 hours' notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session? *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

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The Ralph M. Brown Act

**California Government Code
Sections 54950-54962**

Amended January 1, 2000

54950. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

54950.5. This chapter shall be known as the Ralph M. Brown Act.

54951. As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

54952. As used in this chapter, "legislative body" means:

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.
- (c) (1) A board, commission, committee, or other multimember body that governs a private corporation or entity that either:
- (A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity.
- (B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.
- (2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation or entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation or entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.
- (d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by a local agency or by a delegated authority.

Intent

Title

"local agency": public agencies

"legislative body": governing body

body created by formal action

**private corporation: exercises
delegated authority**

**private corporation: receives public
funds/ appointed legislative body
member on its governing board**

**status change from voting member
to nonvoting member: public meeting
requirements**

lessee of a hospital

newly-elected members

"meeting" defined

**majority cannot use direct communication,
personal intermediaries or
technological devices**

exceptions:

1. individual contacts

2. conferences

3. community meetings

4. another body of the local agency

5. social or ceremonial events

6. standing committee meeting

"action taken"

54952.1. Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter or she has already assumed office.

54952.2. (a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

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

(1) Individual contacts or conversations between a member of a legislative body and any other person.

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

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

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

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

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

54952.6. As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise, a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

54952.7. A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

copies of the Brown Act for members, appointees

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

all meetings must be open and public

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

video teleconferencing

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

public access

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

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

no secret ballots

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

grand jury testimony

54953.1. The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

54953.3. A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

public cannot be required to register to attend meeting

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

voluntary registration

54953.5. (a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without

public can tape meetings

recordings are public record

noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

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

broadcast of open meetings

54953.6. No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

local agencies can impose stricter requirements on themselves

54953.7. Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

regular meetings set by ordinance or other rule

54954. (a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter regular meetings of the legislative body.

meetings must be within local agency's territory

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

exceptions

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impracticable solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

California Government Code

Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items related to the facility.

... the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

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

Attend a conference on nonadversarial collective bargaining techniques.

Interview members of the public residing in another district with reference to the employees' potential employment of the superintendent of that district.

Interview a potential employee from another district.

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

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

54954.1. Any person may request that a copy of the agenda, or a copy of all the items constituting the agenda packet, of any meeting of a legislative body be made available to that person. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other

mailed notice

regular meeting agendas:
72-hour notice and posting

action on non-agenda items

**item continued from meeting
less than 5 days earlier**

resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

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

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

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

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

**public opportunity to address
the legislative body**

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

reasonable constraints on public testimony

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

**public criticism of policies,
procedures, programs or services**

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

reimbursement of costs

54954.4. (a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the

reimbursement process, to rigorously review each claim and authorize only those items, or parts thereof, which represent costs which are clearly and unequivocally as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to the agency for a single agenda for any one meeting.

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

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, an agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

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

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

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

—or—

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

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9:

(Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide

"safe harbors" for closed session agendas

license and permit determinations

real estate negotiations

existing litigation

anticipated litigation

additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

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

liability claims

LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

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

threats to public services

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer)

public employees

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

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

labor negotiation conference

CONFERENCE WITH LABOR NEGOTIATORS

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

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

—or—

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

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

**multijurisdictional drug
law enforcement agency**

CASE REVIEW/PLANNING

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

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

REPORT INVOLVING TRADE SECRET

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

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

HEARINGS

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

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

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

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

4954.6. (a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

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

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

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

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

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

E) Standby or immediate availability charges.

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

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no later than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of

hospital exceptions

hearings

federal law

tax or assessment hearings

new or increased taxes

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

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

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

(B) The activity to be taxed.

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

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

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

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

new or increased assessments

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, as the case may be.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) property owners subject to the assessment.
- (b) voters within the local agency imposing the tax or assessment.

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

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

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

54955. The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any

adjourned meetings

meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

continued hearings

54955.1. Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or reconvened to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

special meetings

54956. A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

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

emergency meetings

54956.5. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

For purposes of this section, "emergency situation" means any of the following:

- (a) Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.
- (b) Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

However, each local newspaper of general circulation and radio or television station which has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting by telephone and all telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

Notwithstanding Section 54957, the legislative body shall not meet in closed session during a meeting called pursuant to this section.

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

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

54956.6. No fees may be charged by the legislative body of a local agency for carry-out any provision of this chapter, except as specifically authorized by this chapter.

54956.7. Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

no fees except those specifically authorized

closed sessions: license applicants with criminal records

54956.8. Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

closed sessions: conference with negotiator over real property

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

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

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

closed sessions: health plan charge or complaint

54956.86. Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

disclosure exemption for health plan records

54956.87. (a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act

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

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (c) of Section 32106 of the Health and Safety Code, shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

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

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

closed session: pending litigation

54956.9. Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

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

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

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

litigation formally initiated

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

California Government Code

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

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

For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

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

Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency which are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

2) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

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

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

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

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

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

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

significant exposure to litigation

meeting to decide if closed
meeting is authorized

initiating litigation

**closed session: claims
against joint powers agencies**

54956.95. (a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

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

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

**closed sessions: threats to
public buildings or to public access**

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

personnel matters

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

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

For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this section shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this section shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

**public reports on
closed session actions, votes**

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

real estate negotiations

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

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

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

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

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

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

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

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

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

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

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester

pending litigation

joint powers authority claims

personnel actions

labor negotiations

copies of closed session documents

is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

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

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

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

closed session minute book

54957.2. (a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

**writings distributed to a majority
of a body are public records**

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

closed session minute book

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6257.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

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

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

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

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

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

54957.7. (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

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

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

54957.8. Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional drug law enforcement agency, or an advisory body of a multijurisdictional drug law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional drug law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

closed sessions: meeting with representatives on labor negotiations

advance announcement of closed session items

closed session: multijurisdictional drug law enforcement agency

"Multijurisdictional drug law enforcement agency," for purposes of this section, means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, which provides drug law enforcement services to the parties to the joint powers agreement.

The Legislature finds and declares that this section is within the public interest, in that its provisions are necessary to prevent the impairment of ongoing law enforcement investigations, to protect witnesses and informants, and to permit the discussion of effective courses of action in particular cases.

willful interruptions of meetings

54957.9. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

**provisions apply not
withstanding conflicts of law**

54958. The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

misdemeanor violations of the Act

54959. Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

civil actions to prevent violations

54960. (a) The district attorney or any interested person may commence an action mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

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

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

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

California Government Code

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

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

2. An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.

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

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

Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

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

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

action to invalidate

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

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

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

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

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

California Government Code

- (1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, and 54956.
- (2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.
- (3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.
- (4) The action taken was in connection with the collection of any tax.
- (5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.
- (e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.
- (f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

court may award attorney fees

54960.5. A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a legislative body of the local agency has violated this chapter. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

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

**meeting sites must be free of discrimination
and accessible to disabled**

54961. (a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

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

**no closed meetings except
as expressly authorized**

54962. Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

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Association of California Water Agencies

California Community College League of
California Cities

California Newspaper Publishers Association

California School Boards Association

California Special Districts Association

California State Association of Counties

Common Cause

League of California Cities

League of Women Voters

Open & Publ. 77

Price

SKU 707

HARASSMENT

I. PURPOSE

The purpose of this policy is to define harassment, to inform employees that harassment is illegal, and to establish a reporting procedure that encourages the reporting of any harassment.

II. POLICY

It is the policy of the City of Novato to provide a businesslike work environment, free from all forms of employee discrimination, including incidents of harassment. Harassment by an employee or of an employee on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, or age will not be tolerated. No employee shall be subjected to any form of harassment by other employees or non-employees. No employee shall harass anyone, including non-employees. Employees are obligated to report, and the City obligated to investigate, all reported incidents of harassment. Violation of this policy will result in disciplinary action up to and including termination.

III. DEFINITION OF HARASSMENT

Harassment is a violation of Title VII of the 1964 Civil Rights Act and the California Fair Employment and Housing Act. In general, harassment includes, but is not limited to:

1. Verbal Harassment: For example, epithets, derogatory comments or slurs on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, or age.
2. Physical Harassment: For example, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, or age.
3. Visual Forms of Harassment: For example, derogatory posters, notices, bulletins, cartoons, or drawings on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, or age.
4. Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which is conditioned upon an employment benefit and unreasonably interferes with an individual's work performance or creates an offensive work environment.

The Federal Equal Employment Opportunity Commission's Guidelines define sexual harassment as:

"Unwelcome sexual advances, requests for sexual favors, and other verbal and/or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

Sexual harassment is further defined to include continual or repeated verbal abuse of a sexual nature including, but not limited to:

1. Graphic commentaries on a person's body;
2. Objects such as, but not limited to, pictures, cartoons or posters in the workplace that are sexually suggestive;
3. Sexually degrading comments, such as, but not limited to, sexual jokes, remarks, questions, teasing, leering, or gestures used to describe a person; or
4. Propositions of a sexual nature.

Sexual harassment also includes the threat or insinuation that lack of sexual submission will adversely affect an employee's employment, wages, advancement, assigned duties or shifts, academic standing, or other conditions that affect an employee's livelihood.

IV. EMPLOYEE ROLE

1. It is the City's philosophy that employees must set an example of acceptable conduct by not participating in or provoking behavior that is offensive.
2. When appropriate, and possible, the employee being harassed should attempt to warn the harasser that the particular behavior is offensive and unwelcome. The employee should make it absolutely clear that she or he is not interested in, or flattered by, uninvited sexual advances. The employee should be specific in advising that person about what conduct is offensive and unwelcome. The employee should make it clear that she or he will take official action if it continues. If an employee perceives a problem, she or he should document the incident thoroughly.

3. If the harassing behavior continues, or if the affected employee was unable or unwilling to confront the harasser directly, she or he should notify her/his immediate supervisor or Department Head and document the notification. It is the employee's responsibility to bring sexual and other harassing behavior to the attention of a superior to ensure proper follow-up action.
4. The City will take all reasonable steps to prevent any retaliation against the complaining party or witnesses supporting the complaining party and appropriate discipline will be imposed on any individual subjecting any party involved in this process to retaliation.
5. All employees are responsible to report sexual and other harassment incidents known to the employee or about which the employee should have known.
6. Any non-supervisory employee who witnesses acts of harassment shall immediately report the incident or incidents to his or her supervisor, Department Head, Human Resource Manager or the Assistant City Manager.

V. SUPERVISOR'S ROLE

1. Individual supervisors are responsible to address sexual and other harassment incidents where the supervisor knows, or should have known, of the incident.
2. Whether the complaining party requests action or not, the supervisor must follow through, either by observing the procedures described below, or, if the harassed employee refuses to file a complaint, by verbally warning the harasser and documenting the admonishment.
3. Any supervisor who fails to take appropriate corrective action will be disciplined by the City.
4. Supervisors shall report all incidents of harassment or sexual harassment to their Department Head; the Department Head shall report the incident to the Human Resource Manager, Assistant City Manager or City Manager.
5. Supervisors may seek assistance from appropriate sources, such as a Department Head or the Human Resource Division when responding to harassment complaints.
6. Any supervisor or Department Head who witnesses acts of harassment shall report the incident or incidents to the appropriate supervisor or Department Head of the involved employee(s), or take appropriate action to investigate the incident if the employee(s) involved are in the department of the witnessing supervisor or Department Head.

VI. REPORTING PROCEDURE

If an employee believes that she or he has been subject to any form of harassment, including sexual harassment, or is being discriminated against in violation of the State and/or Federal laws previously cited, she or he has the right to file a formal or informal complaint. Before a complaint is filed, it is recommended but not required that the harassed employee acknowledge to the harasser that the harasser's behavior is offensive, unwanted or derogatory.

- A. Intent: It is the intent of this procedure to provide an effective means for quickly resolving individual or group problems with a minimum of formal or cumbersome procedural requirements.
- B. Scope: This procedure shall only apply to allegations of harassment in regard to application, recruitment, appointment, training, promotion, retention, discipline, or other aspects of employment because of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, sexual preference, or age, and provides for a process to report and correct the effects of such harassment.
- C. Other Procedures: An employee who has a harassment complaint shall proceed under this section and is not entitled to utilize regular grievance procedures for any complaint submitted under this section.
- D. Reporting Procedure:

All reported incidents of harassment and their resolution shall be recorded and retained in a confidential central file in the Human Resources Division. The following reporting procedures shall be used.

- 1. Informal Resolution: Any person who feels discriminated against or harassed as defined by this policy shall immediately report the incident or incidents to his or her supervisor or Department Head. The initial report may be verbal, but within three business days after the incident is verbally reported it shall be followed up with a written complaint by the complaining party. If reporting the incident to the harassee's supervisor or Department Head is not possible, or the supervisor or Department Head fails to take appropriate action, the employee should report the incident to the Human Resource Manager, Assistant City Manager or City Manager immediately. The individual receiving the report shall:
 - a. Consult with the aggrieved person.
 - b. Make necessary inquiries in an attempt to resolve the complaint, including discussing complaints with the alleged harasser.

- c. Seek an informal resolution of the problems.
- d. Inform the aggrieved person of the complaint's resolution twenty (20) days after completion of the investigation except that the complaining party shall not be informed of any disciplinary action taken or recommended.
- e. Notify the alleged harasser, counsel him or her on the issues of the case, document the actions taken and provide a copy of the documentation to the Personnel Division.
- f. Within three months, check with the aggrieved person on the success of the resolution, and encourage the person to report any recurrence of the problem.

This informal resolution procedure does not preclude discipline of the offending party.

2. Formal Complaint: If informal resolution of the incident or incidents is unsuccessful, the aggrieved person shall file a formal written complaint with the Department Head, Human Resource Manager, Assistant City Manager, or City Manager. If a formal complaint is filed with a Department Head, that Department Head will send a copy of the complaint to the Human Resource Manager, Assistant City Manager or City Manager. The Department Head may also ask the Assistant City Manager to process the complaint. The Human Resource Manager, Assistant City Manager or City Manager will decide whether the complaint is within the jurisdiction of this policy. The acceptance or rejection of the complaint will be done in writing. If the complaint is rejected, the aggrieved person may appeal this decision in writing to the City Manager within five working days of the notice of rejection.

Once the complaint has been accepted, the Department Head, Human Resource Manager, Assistant City Manager, or City Manager:

- a. Shall review the claim with the Assistant City Manager or City Attorney.
- b. May assign a qualified impartial individual to conduct a prompt investigation and shall thereafter review the findings.
- c. Whether or not delegated, shall conduct a complete investigation and make a report to include, but not be limited to, a copy of the complaint or complaints and findings of the investigation.
- d. All confidentiality and privacy rights regarding personnel matters shall be fully protected. The complainants identity, however, will be disclosed where the investigation has the potential for formal disciplinary action and/or criminal prosecution.

- e. Shall explore further possibility of informal resolution of the problem through negotiation or conciliation.
- f. Present findings and recommendations for resolution to the City Manager.
- g. The investigation shall be conducted as quickly as possible, and based upon the investigation and other relevant considerations a written decision will be made determining whether the complaint is supported by the evidence. That decision shall be provided to the complaining party. If the complaint is supported by the evidence, the City shall take appropriate action, including discipline, against the alleged harasser. The nature of such action shall not be disclosed to the complaining party.

This policy does not preclude any rights of appeal allowed by the disciplinary process, or the rights of the employee to full petition, in court, with the California Department of Fair Employment and Housing or the Federal Equal Employment Opportunity Commission. Also, employees involved in this process may obtain representation.

Roderick J. Wood
City Manager

I have received and read the City of Novato "Harassment Policy" and I understand it.

Name:

(Print)

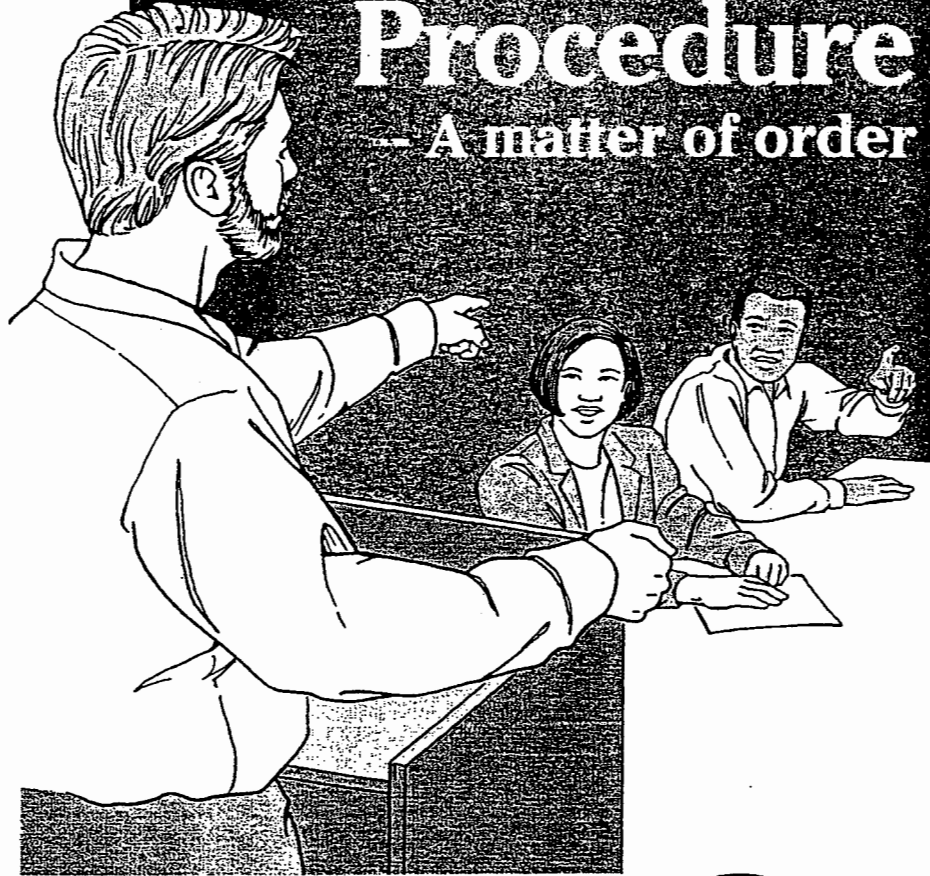
Signed:

Date:

THIS DOCUMENT WILL BE PLACED IN YOUR PERSONNEL JACKET.

Parliamentary Procedure

- A matter of order



American
Institute of
Parliamentarians



Who's parliamentary procedure?

It's a set of rules for conducting business at meetings and public gatherings.

Parliamentary procedure has a long history.

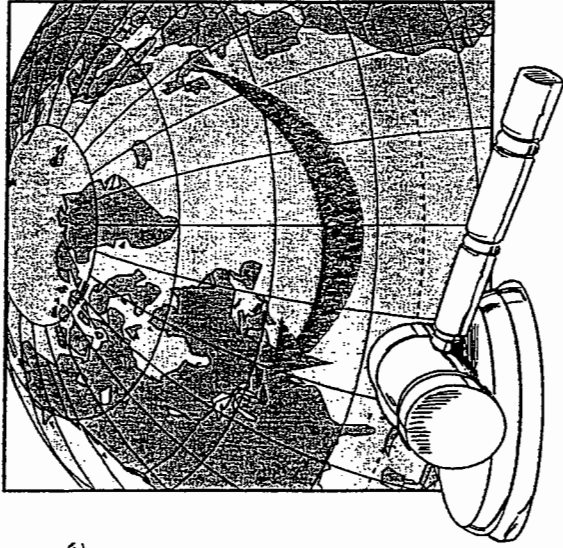
It originated in the early English Parliaments.

It came to America with the first European settlers.

It became uniform in 1876, when Henry M. Robert published his manual on Parliamentary Law.

Today, *Robert's Rules of Order Newly Revised 9th Edition* is the basic handbook of operation for many clubs, organizations and other groups.

Note: A glossary and index are on page 14.

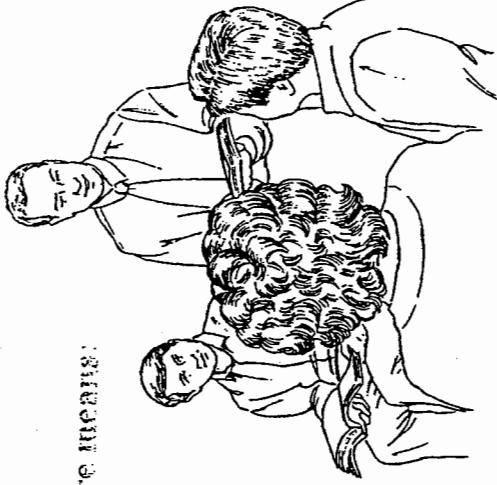


Why is parliamentary procedure important?

Because it allows everyone to be heard and to make decisions without confusion.

Parliamentary procedure means:

- democratic rule
- flexibility
- protection of rights
- a fair hearing for everyone. It can be adapted to fit the needs of any organization.



It's important for everyone to know these basic rules!

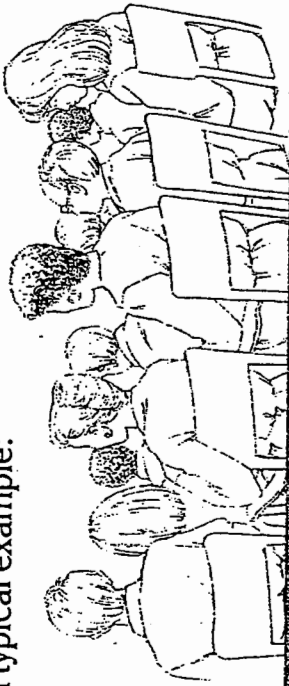
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Agenda,

or order of business, is generally followed by organizations that use parliamentary procedure. Here's a typical example:



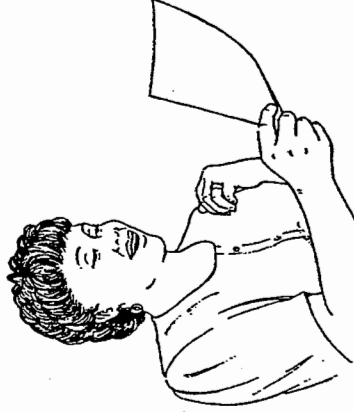
1. **Call to order**
If a quorum* is present, the chair (the person conducting the meeting) says, "The meeting will come to order."
2. **Minutes**
The secretary reads a record of the previous meeting.
3. **Officers' reports**
This is often limited to a report from the treasurer, but others may report at this time.
4. **Committee reports**
First come reports from standing (permanent) committees, then from special (temporary) committees.
5. **Special orders**
This is important business previously designated for consideration at this meeting.
6. **Unfinished business**
This is business that has come over from the previous meeting.
7. **New business**
New topics are introduced.
8. **Announcements**
These inform the assembly (the people at the meeting) of other subjects and events.
9. **Adjournment**
The meeting ends by a vote or by general consent (or by the chair's decision if the time of adjournment was set by an earlier vote).

*A quorum is the number or percentage of members that must be present for business to be conducted legally. The actual number is usually stated in the bylaws.

How do members get their say?

They make motions. A motion is a proposal that the assembly take a stand or take action on some issue. Members have a right to:

Present motions
(make a proposal)
"I move that..."



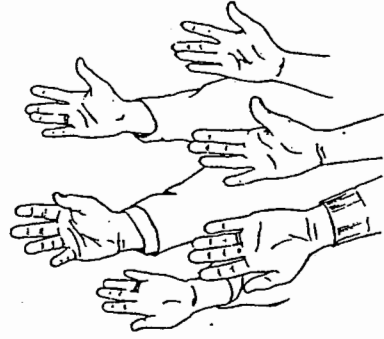
Second motions
(express support for discussion of another member's motion)
"Second."



Debate motions
(give opinions on the motion)
"I think..."



Vote on motions
(make a decision).
"All those in favor..."



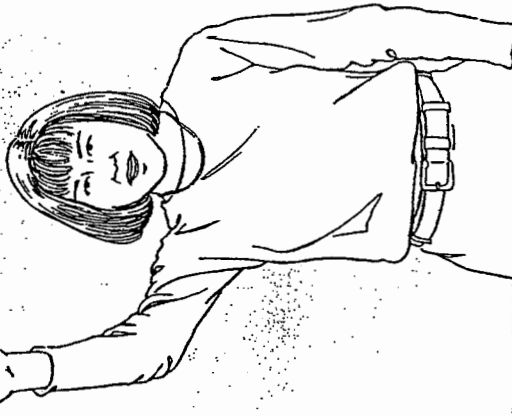
There are 5 general types of motions.

1. Main motions

These introduce subjects for consideration. They cannot be made when another motion is before the assembly. They yield to privileged, subsidiary and incidental motions. For example: "I move that we purchase..."

2. Subsidiary motions

These change or affect how the main motion is handled. (They are voted on before the main motion.) For example: "I move to amend the motion by striking out..."



3. Privileged motions

These concern special or important matters not related to pending business. In general, they are considered before other types of motions. For example: "I move we adjourn."

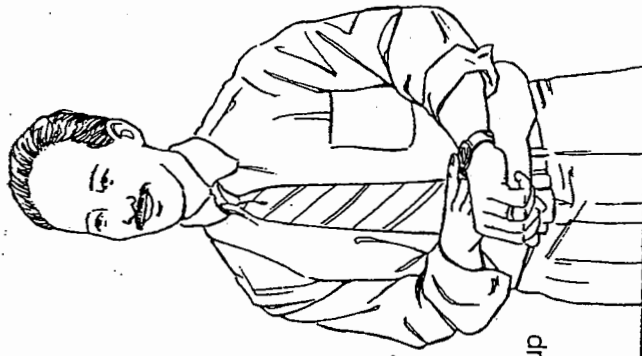
4. Incidental motions

These are questions of procedure that arise out of other motions. They must be considered before the other motion. For example:

"I move to suspend the rules for the purpose of..."

5. Motions that bring a question again before the assembly

These enable certain items to be reconsidered. In general, they are brought up when no business is pending. For example: "I move to reconsider..."



Some questions relating to motions:

Is it in order?

Your motion must relate to the business at hand and be presented at the right time. It must not be obstructive, frivolous or against the bylaws.

May I interrupt the speaker?

Some motions are so important that the speaker may be interrupted to make them. The original speaker regains the floor after the interruption has been attended to.

Do I need a second?

Usually, yes. A second indicates that another member would like to consider your motion. It prevents spending time on a question that interests only one person.

Is it debatable?

Parliamentary procedure guards the right to free and full debate on most motions. However, some subsidiary, privileged and incidental motions are not debatable.

Can it be amended?

Some motions can be changed by striking out or inserting wording, or both. Amendments must relate to the subject as presented in the main motion.

Can it be reconsidered?

Some motions can be debated again and revoted to give members a chance to change their minds. The motion to reconsider must come from the winning side.

What vote is needed?

Most require only a majority vote (more than half the members present and voting). But, motions concerning the rights of the assembly or its members need a $\frac{2}{3}$ vote to be adopted.

The table on

pages 8 and 9 answers these questions for some specific motions.

Parliamentary procedure at a glance

Here are some motions you might make, how to make them, and what to expect of the rules.

To do this:	You say this:	May you interrupt the speaker?	Do you need a second?	Is it debatable?	Can it be amended?	What vote is needed?	Can it be reconsidered?
Adjourn meeting	"I move that we adjourn."	No	Yes	No	No	Majority	No
Call an intermission	"I move that we recess for..."	No	Yes	No ⁽¹⁾	Yes	Majority	No
Complain about heat, noise, etc.	"I rise to a question of privilege."	Yes	No	No	No	No vote	No
Temporarily suspend consideration of an issue	"I move to table the motion."	No	Yes	No	No	Majority	No ⁽²⁾
End debate and amendments	"I move the previous question."	No	Yes	No	No	$\frac{2}{3}$	Yes ⁽³⁾
Postpone discussion for a certain time	"I move to postpone the discussion until..."	No	Yes	Yes	Yes	Majority	Yes
Give closer study of something	"I move to refer the matter to committee."	No	Yes	Yes	Yes	Majority	Yes ⁽⁴⁾
Amend a motion	"I move to amend the motion by..."	No	Yes	Yes ⁽⁵⁾	Yes	Majority	Yes
Introduce business	"I move that..."	No	Yes	Yes	Yes	Majority	Yes
The motions listed above are in order of precedence. Below, there is no order.							
Protest breach of rules or conduct	"I rise to a point of order."	Yes	No	No	No	No vote ⁽⁶⁾	No
Vote on a ruling of the chair	"I appeal from the chair's decision."	Yes	Yes	Yes	No	Majority	Yes
Suspend rules temporarily	"I move to suspend the rules so that..."	No	Yes	No	No	$\frac{2}{3}$	No
Avoid considering an improper matter	"I object to consideration of this motion."	Yes	No	No	No	$\frac{2}{3}$ ⁽⁷⁾	Yes ⁽⁸⁾
Verify a voice vote by having members stand	"I call for a division," or "Division!"	Yes	No	No	No	No vote	No
Request information	"Point of information..."	Yes	No	No	No	No vote	No
Take up a matter previously tabled	"I move to take from the table..."	No	Yes	No	No	Majority	No
Reconsider a hasty action	"I move to reconsider the vote on..."	Yes	Yes	Yes ⁽⁹⁾	No	Majority	No

Notes:

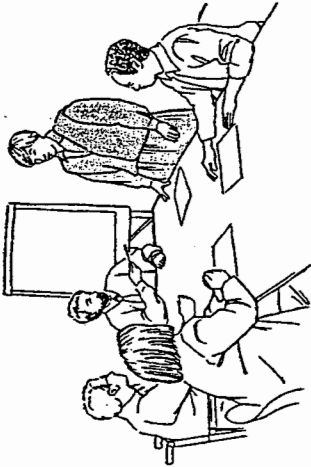
1. Unless moved when no question is pending.
2. Affirmative votes may not be reconsidered.
3. Unless vote on question has begun.
4. Unless the committee has already taken up the subject.
5. Unless the motion to be amended is not debatable.
6. Unless the chair submits to the assembly for decision.
7. A $\frac{2}{3}$ vote in negative is needed to prevent consideration of main motion.
8. Only if the main question has not been debated yet.
9. Unless the motion to be reconsidered is not debatable.

How do I present my motion?

Here's what happens when you want a motion considered:

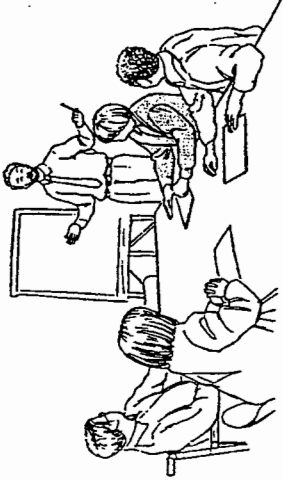
1. You obtain the floor.

- Wait until the previous speaker is finished.
- Rise and address the chair. Say, "Mr. (or Madam) Chairperson" or "Mr. (or Madam) President."
- Give your name. The chair will recognize you by repeating it.



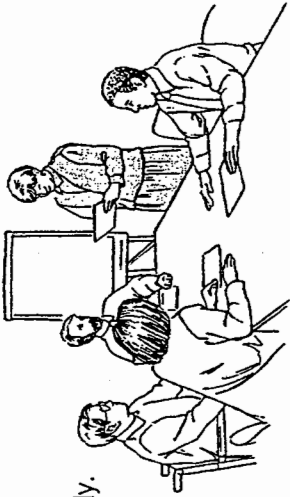
4. The chair states your motion.

- The chair must say, "It is moved and seconded that we..."
- After this happens, debate or voting can occur.
- Your motion is now "assembly property," and you can't change it without consent of the members.



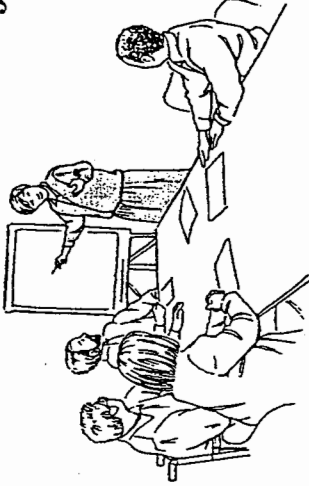
2. You make your motion.

- Speak clearly and concisely.
- State your motion affirmatively. Say, "I move that we do..." instead of "I move that we do not..."
- Stay on the subject and avoid personal attacks.



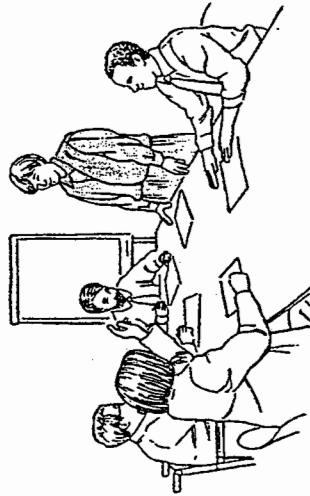
5. You expand on your motion.

- As the person who made the motion, you are allowed to speak first.
- Direct all comments to the chair.
- Keep to the time limit for speaking.
- You may speak again after all other speakers are finished.
- You may speak a third time by a motion to suspend the rules with a 2/3 vote.



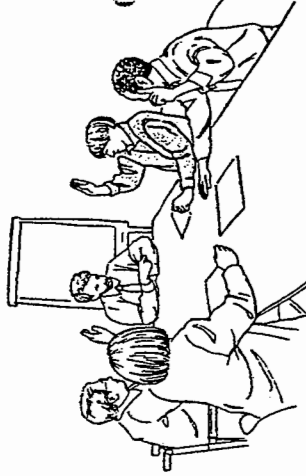
3. You wait for a second.

- Another member will say, "I second the motion."
- Or, the chair will call for a second.
- If there is no second, your motion will not be considered.
- Motions made at the direction of a board or committee (of more than one person) do not require a second.



6. The chair puts the question.

- The chair asks, "Are you ready for the question?"
- If there is no more debate, or if a motion to stop debate is adopted, a vote is taken.
- The chair announces the results.



The method of voting on a motion

depends on the situation and the bylaws of your organization. You may vote by:

Voice

The chair asks those in favor to say "aye" and those opposed to say "no" (for majority votes only). A member may move for an exact count.

Show of hands

Members raise their hands to verify a voice vote, or as an alternative to it. This does not require a count. A member may move for an exact count.

Roll call

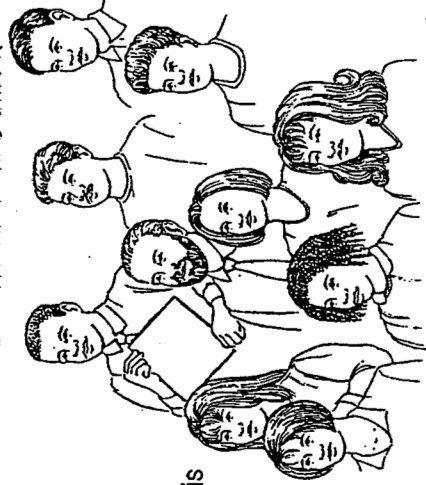
If a record of each person's vote is needed, each member answers "yes," "no" or "present" (indicating the choice not to vote) as his or her name is called.

Ballot

Members write their vote on a slip of paper. This is done when secrecy is desired.

General consent

When a motion isn't likely to be opposed, the chair says, "if there is no objection..." Members show consent by their silence. If someone says "I object," the matter must be put to a vote.



More about voting

A question (motion) is pending when it has been stated by the chair but not yet voted on.

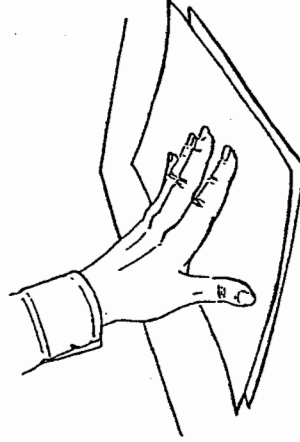
The last motion stated by the chair is the first pending.

The main motion is always the last voted on.

A motion to lay on the table

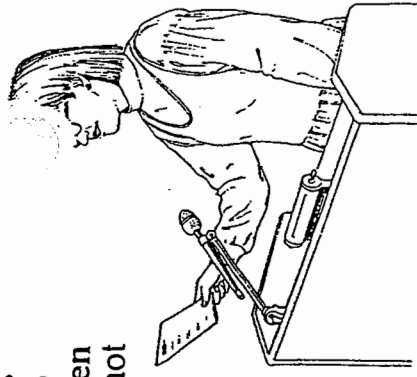
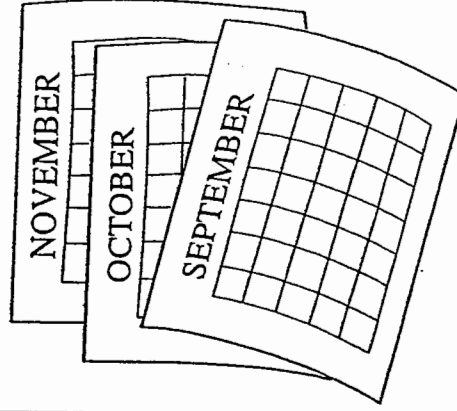
This motion is used to lay something aside temporarily to take care of a more urgent matter. It should not be used to prevent debate or to kill a question.

Members can "take from the table" a motion for reconsideration. This must happen by the end of the current or next session (depending on how soon the next session is scheduled).



A motion to postpone indefinitely

This is parliamentary strategy -- it allows members to dispose of a motion without making a decision for or against. This is useful in case of a badly chosen main motion for which either a "yes" or "no" vote would have undesirable consequences.



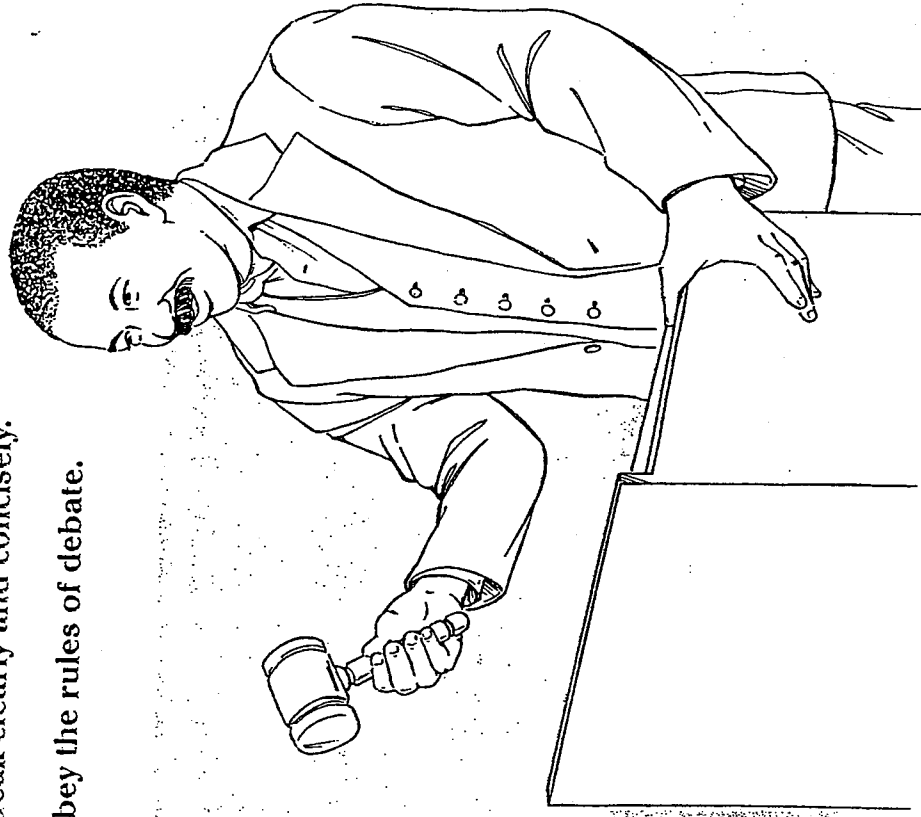
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Make motions that are in order.

Obtain the floor properly.

Speak clearly and concisely.

Obey the rules of debate.



And, most of all, be courteous.
That's always in order!

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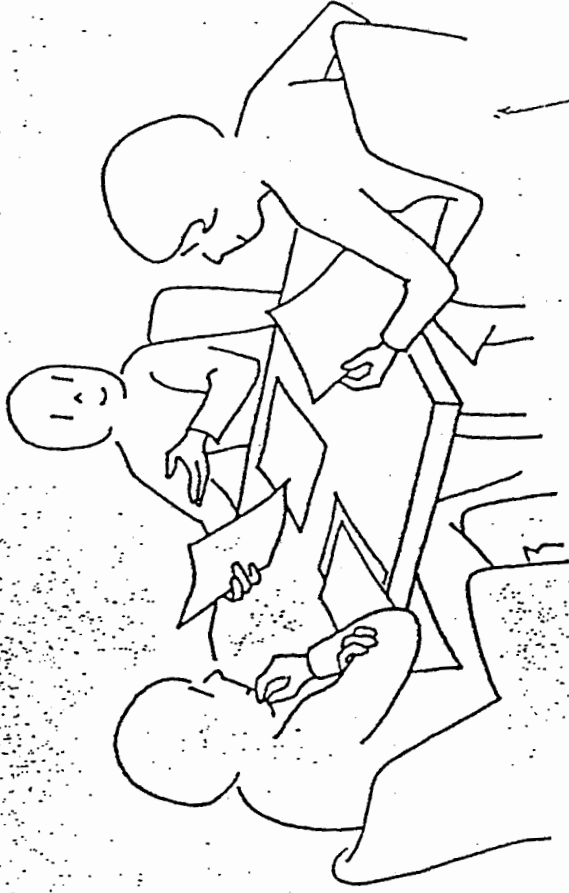
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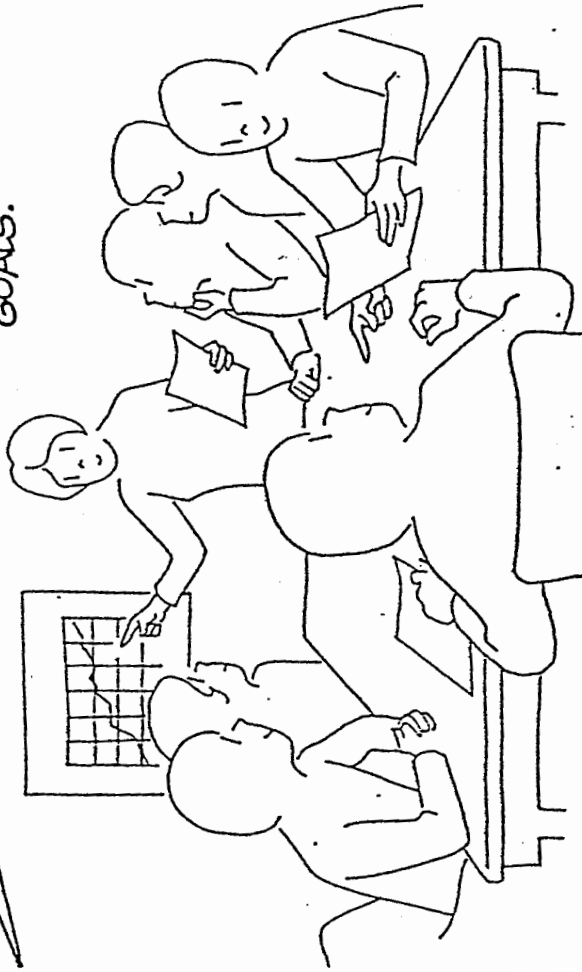
How to have

SUCCESSFUL MEETINGS



What makes a meeting **SUCCESSFUL**?

It takes a team of people who **ACTIVELY EXCHANGE IDEAS** to **ACCOMPLISH GOALS**.



To help ensure success, group members should:

UNDERSTAND THE MEETING'S PURPOSE

A lot can be accomplished when people have a clear sense of direction. Some of the common goals of meetings are to:

- EXCHANGE information
- SOLVE problems
- MAKE decisions
- SHARE concerns
- EXPLAIN issues.

POOL THEIR KNOWLEDGE

Meetings bring together people with different ideas and experiences. Members have an opportunity and a responsibility to:

- EXPRESS thoughts
- REACT to others' ideas
- COMBINE their skills to reach solutions.

Why is my **PARTICIPATION IMPORTANT**?

Because your **IDEAS, COMMENTS** and **SUGGESTIONS** can benefit:

YOUR ORGANIZATION

Active and positive participation helps to:

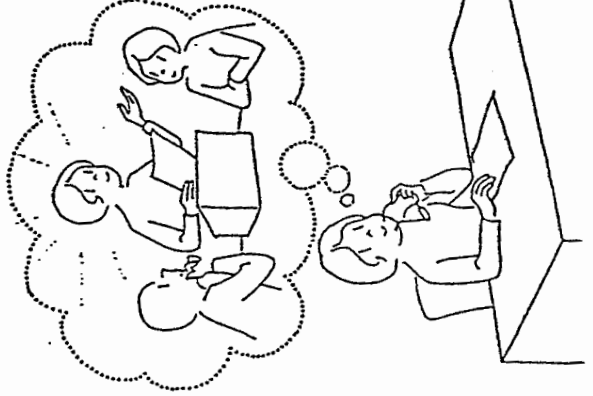
- **ACHIEVE** the goals of the meeting
- **PROMOTE** the group's objectives
- **IMPROVE** teamwork and morale.

All in favor...



Your involvement can help you polish your skills in:

- **COMMUNICATION**, because meetings allow you to gain experience in expressing yourself.
- **LEADERSHIP**, since you can learn a great deal by observing and following the examples of successful group leaders.



Learn how you can...

BE PREPARED

You can help the meeting run smoothly if you
DO YOUR HOMEWORK!

PHONE THE REQUESTOR

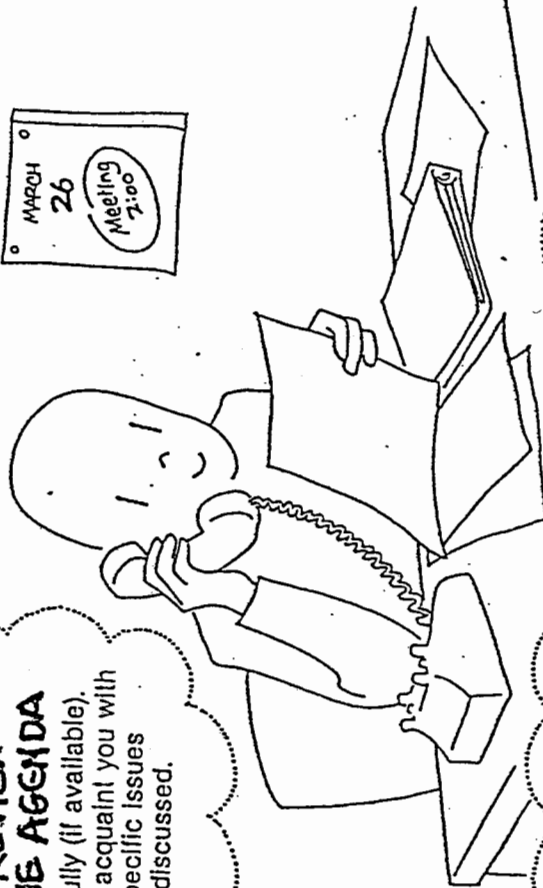
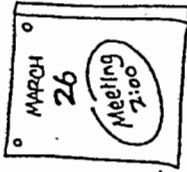
of the meeting so you can determine how you can contribute to the meeting's success.

REVIEW

any available background information before the meeting so you can be a more knowledgeable, valuable meeting member.

REVIEW THE AGENDA

carefully (if available). It will acquaint you with the specific issues to be discussed.



ASK QUESTIONS

before the meeting about anything you don't understand. Questions show your concern for the meeting's success.

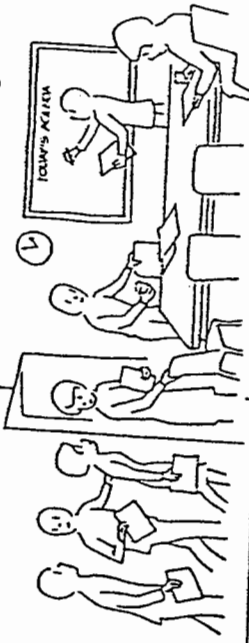
UNDERSTAND

why you've been invited. You're more likely to participate actively if you know what's expected of you.

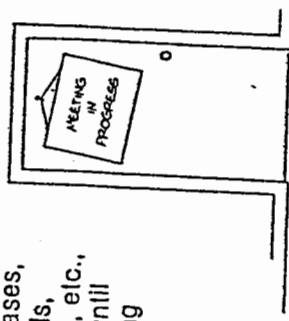
PRACTICE GOOD MEETING MANNERS

Proper etiquette can help ensure that goals are met according to schedule.

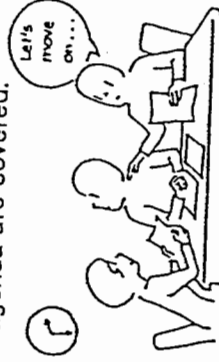
Latecomers may delay the meeting, create confusion or break the flow of progress.



In most cases, phone calls, messages, etc., can wait until the meeting is over.

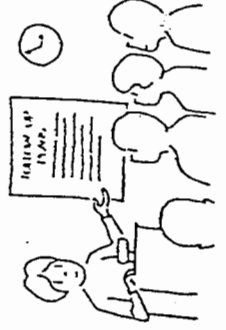


This will allow others a chance to speak and helps ensure that all issues on the agenda are covered.



Important follow-up plans are often made during the final minutes of a meeting.

This includes whispering to your neighbor, doodling, shuffling papers, etc.



YAL PARTICIPATION DOES MAKE A DIFFERENCE

As part of a team working to reach carefully planned goals, it's up to you to:

SUPPORT THE GROUP'S EFFORTS

Commitment to the goals of the group is the most important ingredient for a successful meeting. Combine your talents and energy on the issues at hand.

GET INVOLVED IN DISCUSSIONS

You really can influence the direction the meeting will take.

- Speak when you have something worthwhile to say (but keep your remarks to the point and as brief as possible).
- Encourage others to stick to the issues.

BE CREATIVE

Group members usually welcome innovative ideas that are supported by sound reasoning. To help promote an imaginative plan, try to think of answers to possible criticisms before you present your ideas.

EXPRESS YOUR FEELINGS

Differences of opinion expose people to other points of view. Let others know how you feel about their ideas. But be careful that your remarks do not become a personal attack.

SHARE YOUR THOUGHTS

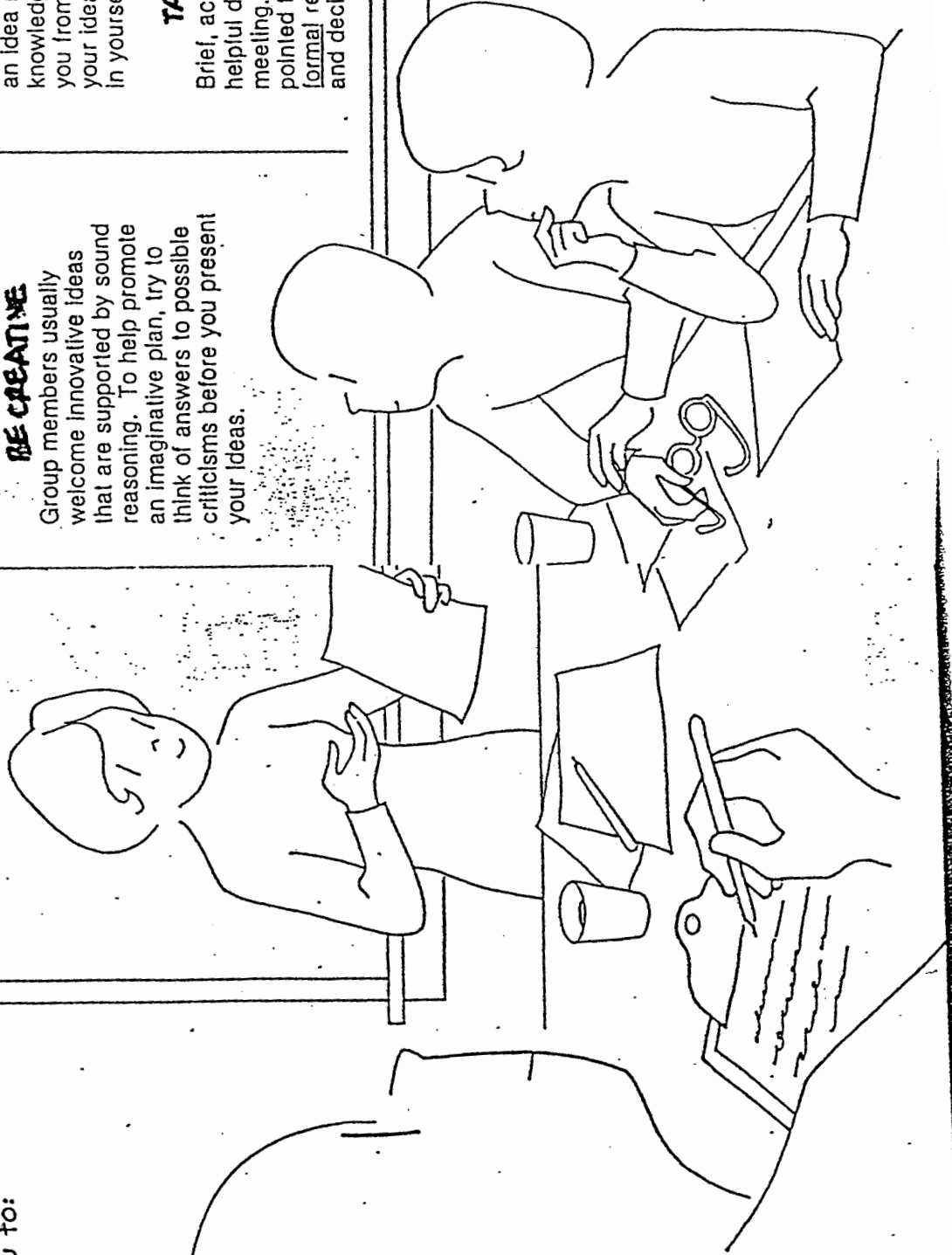
Holding back when you have an idea robs the group of your knowledge. It also prevents you from further developing your idea. Have confidence in yourself, and speak up!

TAKE NOTES

Brief, accurate notes can be helpful during and after a meeting. Someone may be appointed to keep the minutes, a formal record of discussion and decisions.

TAKE A POSITIVE APPROACH

Keep an open mind. When a group member shares an idea, look for the value in that idea. Above all, be enthusiastic. Enthusiasm can be contagious!



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ATTORNEYS AT LAW

3777 NORTH HARBOR BOULEVARD • FULLERTON, CALIFORNIA 92835
(714) 446-1400 • (562) 697-1751 • FAX (714) 446-1448

Richard D. Jones*
Martin J. Mayer

Kimberly Hall Barlow
Christian L. Bettenhausen
Cynthia W. Blaylock
Paul R. Coble
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November 25, 2002

San Jose, California



CIVILIAN REVIEW BOARDS: AN OVERVIEW

By: Martin J. Mayer, Esq.

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MARTIN J. MAYER

3777 North Harbor Boulevard
Fullerton, CA 92835
714-446-1400
E-mail: mjm@jones-mayer.com

The *Law Offices of Jones & Mayer* is located in the City of Fullerton. The firm basically limits its practice to representing cities, counties and special districts on a variety of legal issues. Martin Mayer limits his practice to representing cities, counties and the State as legal advisor to their Chiefs of Police or Sheriffs and in that capacity represents approximately seventy agencies throughout the California. In addition, the firm serves as the City Prosecutor for seven municipalities. Prior to establishing his original law firm, Mr. Mayer worked with the League of California Cities for four years as Director of its Criminal Justice Planning Unit.

Martin Mayer received his undergraduate degree from the City University of New York and his law degree from St. John's University, also located in New York. Mr. Mayer is admitted to practice law in all lower courts in the states of New York and California, the United States Federal Courts, and the United States Supreme Court.

Mr. Mayer lectures extensively on matters involving civil liability and law enforcement on behalf of the California POST Commission, California Peace Officer's Association, California State Sheriff's Association, the Department of Justice, and Americans for Effective Law Enforcement. Mr. Mayer was a member of the faculty of California State Polytechnic University, Pomona, Kellogg West, for eight years, teaching in their Executive Development Program for law enforcement managers.

Mr. Mayer serves as Legal Advisor to the California Police Chiefs Association, the California State Sheriff's Association and the California Peace Officers' Association. He also served, for 10 years, as the State Chairman of the Police Legal Advisors' Committee for the California Peace Officer's Association. Mr. Mayer is a graduate of the Sixth FBI National Law Institute at Quantico, Virginia and was the first attorney in private practice to be included in the program. Mr. Mayer also served as a POST certified reserve with the Downey Police Department for approximately nine years. Mr. Mayer also serves as a member of, and legal advisor to, the Advisory Council for the National Law Enforcement and Corrections Technology Center (Western Region) which is funded by the National Institute of Justice and the U.S. Department of Justice.

Published Articles

- *Utilizing the Department's Legal Counsel at Major Incidents*
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County Chiefs and Sheriff's Associations Annual Training Retreats
- *California Peace Officer's Association (CPOA)* 1979 - present
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Discipline and Due Process
Legal Update (2 day session)
American's With Disabilities Act (ADA)
- *American's for Effective Law Enforcement (AELE)* 1989 - present
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Discipline and Law Enforcement
- *Labor Relations Information System (LRIS)* 1995 - present
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- *International Association of Chief's of Police (IACP)* 1997 - present
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Legal Officer's Section – "Union Impact on Internal Affairs Investigations"
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Legal Issues Affecting Internal Affairs Investigations
- *California Association of Law Enforcement Background Investigators* 1997 - present
Legal Update Impacting Upon Background Investigations
- *League of California Cities Annual Conference* 1998 - present
Chief of police Department – Legal Update
City Attorney Department – Civilian Review Boards

CIVILIAN REVIEW BOARDS

AN OVERVIEW

By: Martin J. Mayer

A civilian review board is typically a panel of appointed citizens which is formed to review citizen complaints against police officers. It is also a means of community participation in setting and reviewing police department policies, practices, and procedures. The following is intended as an overview of some of the issues surrounding the creation and functioning of a civilian review board.

I. BACKGROUND

Civilian review boards were first implemented in large cities like Washington D.C., Philadelphia, Minneapolis, Rochester, and New York in the late-1950's and early 1960's in an effort to improve relations between police and the communities which they served. Police unions were widely opposed to the establishment of civilian review boards and were successful in eliminating civilian oversight in New York and Philadelphia in the mid-1960's. Civilian review boards however experienced renewed popularity in the 1970's in cities like Chicago, Detroit, Baltimore, and Milwaukee. By 1994 there were more than 66 civilian review boards in cities across the nation. According to a recent law review article, the majority of large cities now have civilian review boards in place and a growing number of small cities are adopting the procedure as well.

There are, according to academics who have studied civilian review boards in cities across the nation, four classes of civilian review boards.¹ Generally, what distinguishes the different classes of civilian review boards is the degree of independence the board has from the police department. It should be noted however that almost all civilian review boards have one feature in common: they only have authority to make recommendations.

"Class one" boards are most prevalent in large cities. A "class one" board has the greatest amount of independence. A "class one" board is comprised largely of non-peace officers and handles the complaint process from start to finish, including investigating complaints.

A good example of a "class one" board is the Office of Civilian Complaints (O.C.C.) in San Francisco. The O.C.C. has the authority not only to investigate police conduct that violates any law or department policy but also to hold hearings to investigate department policies and practices. Such hearings may result in a recommendation by the O.C.C. to change, revoke, or write new department policies. In the 1990's, the O.C.C. has had a hand in developing department policies on high-speed pursuits and crowd control.

A "class two" board by comparison is less independent. A "class two" board is not necessarily composed entirely of non-peace officers. A "class two" board does not investigate complaints itself, but

¹ A civilian review board need not fit neatly into any of the following four classes; the description of such classes is merely intended to provide an overview of the types of civilian review boards in place in cities both in and out of California.

rather reviews internal investigations prepared by peace officers and makes recommendations to a law enforcement executive based on those reports.

A "class three" board may consist of as few as two civilian members. In the case of a "class three" board, the police department investigates and reviews citizen complaints and internal affairs recommends some action to the chief law enforcement executive. Appeals may be made to the board which may in turn recommend a different outcome to the chief.

Finally, a "class four" board has the least amount of independence. A "class four" board merely serves to review the police department's internal complaint review procedures and to recommend changes in those procedures where necessary. Examples of "class four" boards may be found in San Jose and Seattle.

As might be expected, there is both support for and criticism of the establishment of civilian review boards. Proponents have suggested that civilian review boards are the most effective means of combating racism and the use of excessive force in law enforcement. There is a perception that internal mechanisms fail to adequately identify and discipline officers guilty of misconduct.

Critics on the other hand complain that civilian review boards, whether due to inadequate funding or a limited grant of overview authority, lack sufficient independence to conduct investigations. Critics also complain that civilian review boards become bogged down in individual grievances and petty politics and spend too little time on department policies. They do not, in other words, do the job they are intended to do.

Critics argue in addition that civilian review boards lack credibility with police. Indeed, in its review of the Los Angeles Police Department, the Christopher Commission indicated that establishment of a civilian review board would greatly increase the risk of an "us against them" attitude on the part of police officers.

II. IS A CIVILIAN REVIEW BOARD IS AN OPTION IN YOUR CITY?

In deciding whether to establish a civilian review board in your city, a logical first step is determining whether a civilian review board may lawfully be established. The answer to that question depends upon how your city government is organized.

A: GENERAL LAW CITIES

General law cities lack the legal authority to establish a civilian review board. According to the California Supreme Court, "[a] general law city has only those powers expressly conferred upon it by the Legislature, together with such powers as are 'necessarily incident to those expressly granted or essential to the declared object and purposes of the municipal corporation.' The powers of such city are strictly construed, so that any 'fair, reasonable doubt concerning the exercise of a power is resolved against the corporation.'" *Irwin v. City of Manhattan Beach*, 65 Cal.2d 13, 20-21 (1966), citing, *Hurst v. City of Burlingame*, 207 Cal. 134, 138.

No statute specifically authorizes a general law city to establish a civilian review board. However, Article 11, section 7 of the California Constitution does authorize a city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations that do not conflict with the general laws.

Along similar lines, Government Code § 37100 states that the city council may pass ordinances "not in conflict with the Constitution and laws of the State or the United States." Thus, the critical issue is whether establishment of a civilian review board by a general law city conflicts with the general laws.

The police department in a general law city is under the control of the chief of police. Government Code § 38630.² It logically follows that the chief of police is authorized to supervise the conduct of members of the police department and that the chief's supervisory powers include the investigation of citizen complaints against members of the department.

For example, Berkeley Police Ass'n v. City of Berkeley, 76 Cal.App.3d 931 (1977), involved the interpretation of a charter provision which gave a city manager control over all of the departments in the city. The California Court of Appeal interpreted that charter provision to give to the city manager the authority to investigate citizen complaints against police officers. While that case involved a charter provision, it seems most probable that a court would interpret Government Code § 38630 the same way: if the chief of police is given "control" of the police department, then the chief of police has authority to investigate citizen complaints against police officers.³

Having established that Government Code § 38630 gives the chief of police control of the police department, one might ask whether a city may nonetheless transfer at least some of the chief's duties to another officer or body, like a civilian review board. Government Code § 34004 states:

Where any duty is imposed upon a municipal officer by any law of this State or any rule or regulation adopted under the authority of any such law the governing body of a city may, by ordinance, impose such duty or a portion thereof upon such other officer of such city as is charged under charter of that city, or by applicable general law with the performance of duties of the same character in that city. A copy of any such ordinance as adopted shall be filed with the state officer or agency which has charge of the matter to which such duty pertains.

Under Government Code § 34004, a general law city may transfer certain duties of one officer to another officer provided he or she is charged by the general law with the performance of similar duties. However, no other officer in a general law city has duties similar to the chief of police with respect to supervision of police operations and the investigation of citizen complaints. Those duties are unique to the chief of police. Moreover, Government Code § 34004 does not authorize the creation of new officers (e.g. a civilian review board); it merely authorizes the transfer of certain duties to existing officers. Therefore, Government Code § 34004 does not appear to authorize the creation of a civilian review board in a general law city.

² In contrast, the organization, maintenance, and operation of a police and fire department by a chartered city is a municipal affair and, as such, is not subject to the control of the legislature. Thus, Government Code § 38630 does not apply to a charter city. Brown v. City of Berkeley, 57 Cal.App.3d 223, 236 (1976).

³ Specifically, the Court of Appeal stated: "Article VII, section 28© of the Berkeley City Charter confers the power on the city manager 'To exercise control over all departments, divisions and bureaus of the City Government and over all the . . . employees thereof.' [Citation omitted]. This clearly includes the power to investigate complaints against police officers, as well as to discipline, or remove them." [Emphasis added].

Thus, it is questionable whether a general law city may legitimately establish a civilian review board with authority to investigate citizen complaints. To do so would appear to be contrary to the general law, specifically, Government Code § 38630 and thus outside the authority of the city under Article 11, section 7 of the California Constitution and Government Code § 37100.⁴

B: CHARTER CITIES

The authority of charter cities to create civilian review boards is well established. Several cases have upheld the authority of charter counties and cities to establish civilian review boards, but those cases involve charter cities and charter counties. That is due to the fact that charter cities and counties have much broader authority to establish the powers and duties of local government officials than do general law cities. See, e.g., *Dibb v. County of San Diego*, 8 Cal.4th 1200, 1215 (1994) ("a county charter may provide for powers and duties of county officers although such powers and duties, as fixed by the charter, may differ from and be in conflict with the powers and duties of such officers as provided by the general laws of the state").

To start, Article 11, section 5(b) of the California Constitution states in pertinent part: "[i]t shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for . . . the constitution, regulation and government of the city police force." Thus, in the case of a charter city, in direct contrast to a general law city, the city charter determines who has control of the police department, whether exclusive or limited.

In *Brown v. Berkeley*, 57 Cal.App.3d 223 (1976), a taxpayer filed a lawsuit challenging the validity of an initiative ordinance adopted by the voters of the city to establish, and grant certain designated powers to, a police review commission. The plaintiff claimed that the ordinance conflicted with the city charter.

The city charter, in accordance with California Constitution, article 11, section 5, gave the city council the power to "organize and maintain" the police department. Thus, the Court of Appeal held that the establishment of a police review commission was proper. "The words 'organize and maintain' connote the power of the council to have an ongoing involvement in the formation of the policies, practices, and procedures of the police department. The fundamental nature of the ordinance [establishing the police review commission] is directly aimed at inquiring into and investigating the policies, practices and procedures of the police department. Under the charter sections, it is clearly within the council's power to inquire into said police department practices, procedures and policies and make recommendations concerning same." *Id.* at 233.

The Court of Appeal did determine that the ordinance was in conflict with the city charter to the limited extent it empowered the commission to recommend specific action and/or disciplinary action as to individual officers. To do so, the Court of Appeal determined, would usurp the powers and functions of the city manager under the charter.

⁴ For a contrary view, see 71 Ops.Cal.Atty.Gen. 1 (1988) in which the California Attorney General stated: "the constitutional provisions and statutes cited above [including Government Code § 34004 would appear to provide ample authority for the electorate or legislative body of a California city [including general law cities] to provide in the city charter or by city ordinance that the city manager, an assistant city manager or a citizens' review board has authority to investigate citizens' complaints against police officers or that they have authority to advise, impose or review discipline imposed on police officers for misconduct alleged in such complaints." It should be noted however that the foregoing statement is the equivalent of dicta in a court opinion. It was not in answer to the question posed to the Attorney General and the analysis was cursory.

Implicit in the Court of Appeal's holding in *Brown v. Berkeley*, supra, was a determination that a charter city possessed authority to establish a civilian review board.

Likewise, in *Dibb v. County of San Diego*, 8 Cal.4th 1200, a taxpayer filed a lawsuit challenging an initiative ordinance establishing a civilian review board. The taxpayer claimed that there was no authority for establishment of such a board. The California Supreme Court upheld the ordinance.

According to the Supreme Court, Government Code 31000.1 [applicable to counties, but not cities] authorized the establishment of a civilian review board. That section provides: "[t]he board of supervisors may appoint commissions or committees of citizens to study problems of general or special interest to the board and to make reports and recommendations to the board. The members of such commissions need not be specially trained or experienced with respect to the matters to be studied . . ." The Supreme Court also held that the civilian review board was authorized by Government Code § 25303, requiring a county board of supervisors to supervise the conduct of all county officers. "We conclude that under section 25303, the board of supervisors has a statutory duty to supervise the conduct of all county officers. [Citation omitted]. Moreover, section 31000.1 permits the board of supervisors to establish a commission of citizens to study and report on matters within the board's 'general or special interest.' It follows that the creation and existence of the CLERB is authorized by statute." *Id.* at 1210.

In light of *Dibb*, if the authority of a charter city to establish a civilian review board were ever challenged, it appears that a court would determine that a charter city has such authority under the California Constitution, article 11, section 5. Indeed, in *Dibb*, the Supreme Court stated that the "home rule" afforded to a charter city is, "substantially more expansive [than that afforded to a county]." *Dibb*, supra, 8 Cal.4th at 1207.

That does not mean however that any charter city may establish a civilian review board. A charter city may only establish a civilian review board if to do so is not contrary to the city's charter. As was the case in *Brown v. City of Berkeley*, supra, in which portions of the ordinance establishing a civilian review board conflicted with the city charter, a civilian review board ordinance which conflicts with the city charter will be overturned. Thus, if a city charter gives exclusive control of the police department to the chief of police, then a court would very likely overturn an ordinance establishing a civilian review board. After all, the charter of a municipality is its constitution. See, *Coming Up, Inc. V. City and County of San Francisco*, 830 F.Supp. 1302 (N.D. Cal. 1993).

III. ISSUES THAT MAY ARISE ONCE A CIVILIAN REVIEW BOARD IS ESTABLISHED

A: COLLECTIVE BARGAINING

An issue that may be raised before or shortly after the establishment of a civilian review board is the obligation of the city to meet and confer with the police officers association on the subject.⁵

⁵ The mere fact that the decision whether to establish a civilian review board will be decided by the voters is not necessarily determinative of the city's obligation to meet and confer under the Meyers-Milias-Brown Act. See, *People ex rel. Seal Beach Police Officers Association v. City of Seal Beach*, 36 Cal.3d 591 (1984) (if the topic of a charter amendment is a subject of collective bargaining, the city must meet and confer in good faith with the association before the amendment is submitted to voters).

The Meyers-Milias-Brown Act, Government Code § 3500, et seq., obligates public employers to meet and confer in good faith with employee associations concerning wages and hours, and other terms and conditions of employment. Government Code § 3505. A police officers association may argue that establishment of a civilian review board is a term and condition of employment concerning which the city must meet and confer in good faith.

However, the city's duty to meet and confer in good faith is limited to matters within the "scope of representation," defined by Government Code § 3504 as:

all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment; except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

See, e.g., *International Assn. of Fire Fighters Union v. City of Pleasanton*, 56 Cal.App.3d 959, 966 (1976).

Penal Code § 832.5(a) provides: "[e]ach department or agency in this state that employs peace officers shall establish a procedure to investigate citizens' complaints against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public." Penal Code § 832.5 leaves it to the discretion of the city to determine the form the required procedure will take, including who will receive and who will investigate complaints. The Attorney General has stated in a written opinion furthermore that while many citizen complaints are often handled internally by police, "nothing in section 832.5 restricts the required procedure to the personnel of the police department. We see no reason why the required procedure could not involve the city manager, an assistant city manager or a citizens' review board."

Establishment of a civilian review board involves the organization or reorganization of government; it is nothing less than the creation of a government body. Thus, establishment of a civilian review board should not be considered a subject concerning the which the city has an obligation to meet and confer in good faith with the police officers association.

In *Berkeley Police Association v. City of Berkeley*, 76 Cal.App.3d 931 (1977), for example, the police officers association filed a lawsuit to enjoin implementation of a procedure announced by the chief of police whereby a member of the city's civilian review board would attend department hearings on citizen complaints and a department representative would attend board meetings to present the department's position and to provide information from department investigations. The association claimed that the department had established new policies regarding the investigation of citizen complaints against police officers without first having met or conferred with the association.

The Court of Appeal held that the department did not have a duty under the Meyers-Milias Brown Act to meet and confer with the police officers association concerning the policies announced by the chief because the policies did not fall within the scope of representation. According to the Court of Appeal, the policies announced by the chief concerned a matter of police-community relations and thus constituted "management level decisions which are not properly within the scope of union representation and collective bargaining." *Id.* at 937. "To require public officials to meet and confer with their employees regarding fundamental policy decisions such as those here presented, would place an intolerable burden upon fair and efficient administration of state and local government." *Id.*

The establishment of a civilian review board involves a change in the structure of city government, not a change in the terms and conditions of employment. Thus, the city is not obligated to meet and confer with the police officers' association prior to implementing a civilian review board.

B: SUBPOENA POWERS OF THE BOARD

A civilian review board lacks real independence to conduct investigations and hearings if it lacks the authority to issue subpoenas compelling the attendance of witnesses and/or the production of documents. Thus, an issue may arise concerning the subpoena powers of a civilian review board.

In *Dibb v. County of San Diego*, *supra*, 8 Cal.4th 1200 (1994), the California Supreme Court addressed the subpoena power of a civilian review board in a charter county. The Supreme Court held that a civilian review board in a charter county may be granted the power to issue subpoenas. Citing to Article 11, section 4(e) of the California Constitution, the Supreme Court indicated that a county charter shall provide for the powers and duties of governing bodies and county officers. Thus, the Supreme Court held: "to the extent the power to issue subpoenas is properly grounded on the county's authority to provide for the "powers and duties" of its local officers and the operation of its local government, it is within the competence of the charter." *Id.* at 1009.

Article 11, section 5 of the California Constitution pertaining to charter cities states: "[i]t shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs . . ." According to the Supreme Court in *Dibb*, the authority granted to charter cities is greater than the authority granted to charter counties under Article 11, section 4(e) of California Constitution. Logic dictates that if a charter county may grant subpoena powers to a civilian review board, then a charter city, which has greater authority under the California Constitution, may certainly give a civilian review board subpoena powers.

The Supreme Court did indicate in *Dibb*, however, that if a person or entity disobeyed a subpoena issued by the board, the board was powerless to punish contempt. According to the Supreme Court, only a court may adjudicate and punish contempt. A civilian review board must proceed in court to enforce a subpoena under the court's contempt power. *Id.* at 1217- 1218.

In sum, a civilian review board may be authorized to issue subpoenas but is powerless to enforce its subpoenas and instead must seek the assistance of the court in enforcing its subpoenas.

C: REVIEW OF PEACE OFFICER PERSONNEL RECORDS

Review of citizen complaints necessarily entails review of peace officer personnel records.⁶ Under Penal Code § 832.7 however peace officer personnel records are confidential and may only be disclosed pursuant to Evidence Code § 1043, et seq. The issue may arise therefore whether a civilian review board must comply with the procedures set forth at Evidence Code § 1043, et seq. in order to be able to review peace officer personnel records, including citizen complaints made pursuant to Penal Code § 832.5.

⁶ Citizen complaints are, as a matter of law, part of a peace officer's personnel records. Penal Code § 832.5(c).

This issue was addressed by the Attorney General in a written opinion in 1988. The question posed to the Attorney General was:

Does a city manager, an assistant city manager, or citizens' review board have a right to inspect citizens' complaints against city police officers on file in the internal affairs division of the police department?

In that opinion, the Attorney General interpreted Penal Code § 832.7 to include two exceptions to the required showing of good cause and materiality upon noticed motion that are not expressly stated in the statute: 1) giving access to citizen complaints to that individual or body, including a civilian review board, designated by a city to investigate citizen complaints and 2) giving access to that individual or body designated by the city to advise, impose or review discipline upon a police officer for misconduct revealed by the investigation of a citizen complaint.

The Attorney General stated:

Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. [Citation omitted]. The requirement in section 832.5 that citizens' complaints be investigated necessarily requires that those designated to do the investigating will have access to the complaints. On this basis we interpret section 832.7 to include a third exception to the requirement of confidentiality by necessary implication giving access to the citizens' complaints to those designated in the departmental procedure established pursuant to section 832.5 to investigate such complaints.

The Attorney General further stated with respect to the ability to review citizens' complaints in making decisions concerning discipline:

The Legislature contemplated that when police misconduct was discovered in such investigations, appropriate disciplinary action would be taken against the errant officer. The purpose of the statute is to "investigate and remedy wrongdoing". (Citation omitted). To accomplish the purpose of remedying wrongdoing those having the authority to discipline police officers for their misconduct must have access to the citizens' complaints and the information produced by their investigation, all of which is made confidential by section 832.7. Not only is this information essential to those who actually impose have the duty or authority to advise or review such discipline. We therefore interpret section 832.7 to include a fourth exception to the requirement of confidentiality by necessary implication giving access to the citizens' complaints to those who have the duty or authority to advise, impose or review discipline upon a police officer for misconduct revealed by the investigation of the citizens' complaint.

Moreover, a motion under Evidence Code § 1043 is not required where a government agency and its attorney conduct a limited review of peace officer personnel files within the custody and control of the agency for some relevant purpose. In *Michael v. Gates*, 38 Cal.App.4th 737 (1995), the Court of Appeal held that there is no disclosure for purposes of Evidence Code § 1043 in such cases. In *Michael*, a retired officer sued his former employer for having disclosed his personnel files to a deputy city attorney without making an Evidence Code § 1043 discovery motion. The retired officer was an expert witness in a civil suit against

the city and the deputy city attorney reviewed the former employee's file to determine whether there were any materials therein that he could use to impeach the former officer.

Thus, it would appear that a civilian review board is exempt from the requirements of Evidence Code § 1043 provided it is empowered to investigate citizen complaints and/or impose or make recommendations concerning appropriate discipline. Nonetheless, it is important to note that a civilian review board with the authority to review citizen complaints is required by Penal Code § 832.7 to maintain the confidentiality of such complaints and is precluded from disclosing the contents thereof to members of the public.

D: LEGAL REPRESENTATION OF THE BOARD

A civilian review board may at some point require legal advice. The members of a civilian review board may have little or no experience in police matters and may have even less experience in the laws related to police. Very likely, the city attorney will be called upon to advise the board on legal matters.

Under such circumstances there exists the possibility for a conflict of interest. Consider the situation in which a civilian review board is conducting a disciplinary hearing and a member of the city attorney's office is advising the board at the same time that another member of the city attorney's office is representing the department in the hearing.

A civilian review board is expected to be an independent and impartial body. The independence and impartiality of the board may be challenged however if members of the same office are both advising the board and representing the department in a matter. One of the primary purposes for establishing a civilian review board is to lend legitimacy to, and to increase public confidence in, investigations into police misconduct. If the same attorneys are advising the board and the department there may be a perception that the board lacks independence from the department.

Thus, a great deal of consideration must be given to who will advise the board and who will represent the department in matters before the board to avoid the perception of a conflict of interest.

E: PUBLIC SAFETY OFFICERS BILL OF RIGHTS

Depending upon the role a civilian review board is to fill, some board actions may trigger the Public Safety Officers Bill of Rights Act, codified at Government Code § 3300, et seq. "The act is concerned primarily with affording individual police officers certain procedural rights during the course of proceedings which might lead to the imposition of penalties against them." [Citations omitted]. *White v. County of Sacramento*, 31 Cal.3d 676, 681 (1982).

An issue may be raised whether the Procedural Bill of Rights is applicable only to internal investigations or whether it is applicable to investigations by external bodies like a civilian review board. Government Code § 3303, the heart of the Procedural Bill of Rights Act, indicates that the protections afforded therein are triggered upon "interrogation by his or her commanding officer, or any other member of the employing public safety department."

No case has addressed the issue whether a civilian review board must afford an officer the protections established by the Procedural Bill of Rights Act. However, it seems likely that a court would interpret the Procedural Bill of Rights Act to apply to investigations by a civilian review board.

In *City of Los Angeles v. Superior Court (Labio)*, 57 Cal.App.4th, a city appealed an order of the trial court suppressing statements made by an officer to a lieutenant within the department. The statements were suppressed by the trial court because the officer had been interrogated without being afforded the protections set forth in Government Code § 3303. One argument made by the city for the admissibility of the statements was that the officer had not been interrogated by a member of the internal affairs division and that the Act was only intended to apply to interrogations by members of an internal affairs division. The Court of Appeal rejected that contention. The Court of Appeal held that the contention was contrary to the language of the code, but "[m]ore fundamentally, the City's position is contrary to the legislative purpose of the Act to protect police officers from abuse or arbitrary treatment. [Citations omitted]. If an officer under investigation for a violation of law or department rules could be interrogated by his commanding officer outside the procedural protections of the Act, the protections afforded to police officers in the Act would be eviscerated." [Emphasis added]. What is important about this case is that the Court of Appeal interpreted the Act in light of the intent of the legislature to establish greater protections for peace officers and did not interpret the Act as restrictive in nature.

It would appear that the same logic applied by the Court of Appeal in *Labio* requires that a civilian review board afford police officers the protections established by the Procedural Bill of Rights. If members of the same employing agency, who are not members of the police department, are permitted to interrogate a police officer without affording the officer the protections of Government Code § 3303, the protections afforded to police officers in the Act would likewise be eviscerated. If that were the case, public entities could easily side-step the requirements of the Act. It seems much more likely that a court would interpret the Act to require any member of the public entity that employs an officer, whether a member of the police department or a civilian review board, to afford the officer the procedural safeguards set forth in the Act, including those set forth at Government Code § 3303.

IV. CONCLUSION

A civilian review board is a means of external review of citizen complaints against police officers. It is also a means of community participation in setting and reviewing police department policies, practices, and procedures. Once a civilian review board is established (provided that one may lawfully be established), a number of issues may arise including: 1) whether it is a subject of collective bargaining, 2) whether the board may issue subpoenas, 3) whether the board may have access to peace officer personnel files without complying with Evidence Code § 1043, 4) who will provide legal advice to the board, and 5) whether a civilian review board is bound by the Public Safety Officers Bill of Rights Act.

Jones & Mayer, located in Fullerton, limits its practice to representing cities, counties and the State as legal advisor to their police and sheriff's departments. Mr. Mayer was, for 10 years, the State Chairman of CPOA's Police Legal Advisors Committee. He currently serves as counsel to the California Police Chief's Association, the California State Sheriff's Association and the California Peace Officers' Association.