

February 11, 2010

BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING AGENDA

Thursday, February 11, 2010

7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

C. Reference to Fundamental Rights of Public -A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

III. OPPORTUNITY FOR PUBLIC COMMENT

This portion of the meeting is reserved for persons wishing to address the Commission on any matter not on the agenda that is within the subject matter jurisdiction of the Planning Commission. State law prohibits the Commission from responding to or acting upon matters not listed on the agenda.

Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN

B. PUBLIC COMMENT

IV. PRESENTATION

A. [OPEN GOVERNMENT PRINCIPLES](#)

The City Attorney will be giving an overview of the Open Government Ordinance, including Brown Act, Conflict of Interest, Ethics, Public Records and Ex-Parte Communication.

V. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

A. Approval of Agenda

B. [Approval of Minutes of December 10, 2009](#)

VI. REGULAR AGENDA ITEMS

A. COMMISSION DISCUSSION ITEMS PRIORITY NUMBER 4 – Commission Discussion

Staff will present General Plan references and policies related to city gateways to engender discussion with the Planning Commission.

VII. COMMUNICATIONS FROM STAFF

A. [UPDATE ON THE INTERMODAL PROJECT](#)

Staff will briefly update the Commission regarding progress made with the City's Intermodal project.

VIII. COMMUNICATIONS FROM COMMISSIONERS

IX. ADJOURNMENT

Public Participation

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on non-agendized matters under public comments, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the Planning Commission.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items which remain on the agenda may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions which are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Planning Commission.

 [Open Government \(pdf\)](#)

 [December 10, 2009 Minutes \(pdf\)](#)

 [Intermodal Update \(pdf\)](#)

 [Commission Discussion Item Priority Number 4](#)

**AGENDA ITEM
PLANNING COMMISSION MEETING:
FEBRUARY 11, 2010
INFORMATIONAL ITEMS**

DATE : February 2, 2010
TO : Planning Commission
FROM : City Attorney
SUBJECT : **COMPLETION OF OPEN GOVERNMENT AWARENESS TRAINING**

RECOMMENDATION:

Complete open government awareness training.

EXECUTIVE SUMMARY:

The Open Government ordinance requires that all public officials and some employees read the Open Government Ordinance and attend an annual training on the ordinance. This training will also include a review of the Brown Act, the City's Code of Conduct and other related documents.

BUDGET INFORMATION:

There is no fiscal impact.

BACKGROUND:

The training includes a review of the Brown Act, conflict of interest issues, ethics, due process and open government tips for effective meetings. Please sign and return the certificate of completion (provided at the meeting) to the City Clerk's office or the City Attorney's office once you have read the ordinance and completed the training. It is not necessary to sign and return page 4 of the Code of Conduct since your signature on the certificate of completion includes verification that you have reviewed the Code.

Attachments:

- Title 4 of the Benicia Municipal Code (Open Government Ordinance)
- The 2010 Brown Act
- Participating in City Council Meetings
- Open Government Tips
- Code of Conduct
- Can I Vote?

TITLE 4

**Title 4
OPEN GOVERNMENT**

Chapters:

- 4.04 In General**
- 4.08 Public Access to Meetings**
- 4.12 Public Information**
- 4.16 Ethics**
- 4.20 Open Government Commission**

**Chapter 4.04
IN GENERAL**

Sections:

- 4.04.010 Goal.
- 4.04.020 Findings and purpose.
- 4.04.030 Fundamental rights.
- 4.04.040 Copies to be provided.
- 4.04.050 Definitions.

4.04.010 Goal.

It is the goal of this title to make it easier for people to access city government so that they may be more informed about what their city is doing and so that they may be involved in a more meaningful and knowledgeable way. Open meetings, easier access to public records, ethical guidelines and a watchdog commission will help increase the public trust and confidence in the city government and will increase the public awareness and knowledge about their government. A well-educated public and ethical officials are essential to good government. (Ord. 05-06 § 1).

4.04.020 Findings and purpose.

The city council finds as follows:

- A. The Ralph M. Brown Act states: "The people of this State do not yield their sovereignty to the agencies which serve them."
- B. It is the city's duty to serve the public and to accommodate those who wish to obtain information about or participate in the process of making decisions.
- C. Elected city officials, commissions, boards, advisory bodies and other agencies of the city exist to conduct the people's business. This title is intended to assure that the deliberations of these bodies and the city's operations are open to the public.
- D. This title is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Benicia can be fully informed and thereby retain control over the instruments of local government in their city.
- E. This title is intended to list and implement fundamental rights of each member of the public. (Ord. 05-06 § 1).

4.04.030 Fundamental rights.

Fundamental rights of each member of the public include, but are not limited to:

A. The right to receive meaningful, advance notice of agendas and packets of all meeting materials.

B. The right to attend, listen to and participate in all meetings without cost, signup, giving name or address or any personal information.

C. The right to speak with a meaningful amount of time on every agenda item separately, including each consent item, closed session or any report items without being required to sign up, give his/her name, or address, or any other information.

D. The right to interrupt the body for a point of order or clarification except to the extent that it becomes unduly disruptive.

E. The right to speak on any subject not on the agenda so long as the subject relates to the business of the body.

F. The right to criticize the body or members for their official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.

G. The right to pull consent agenda items for public review and discussion.

H. The right to comment on every agenda item either during the public comment period on that item, under the general public comment period or in writing.

I. The right to use presentation tools when commenting.

A plaque listing these rights will be placed at the entrance of the council chambers. These rights shall be read aloud by the presiding official to the public at the start of each meeting unless the rights are posted in the meeting room. If the rights are posted, the presiding officer may state the rights are posted instead of reading them. (Ord. 05-06 § 1).

4.04.040 Copies to be provided.

The office of the city attorney shall provide any person with a copy of the Brown Act or Public Records Act or this title without charge. (Ord. 05-06 § 1).

4.04.050 Definitions.

The following words and phrases, whenever used in this title, shall be construed as hereafter set out unless it shall be apparent from the context that they have a different meaning. Unless defined herein, the definitions in the Ralph M. Brown Act and the California Public Records Act and related laws shall govern.

A. "Agenda packet" means the nonconfidential portion of a body's agenda-related materials. "Agenda packet" includes materials that:

1. Were distributed by the city to a majority of the members of a body prior to or at the meeting; and

2. Relate to an item on the agenda.

B. "Body" means:

1. The Benicia city council;

2. Any board, commission, task force or committee, which is established by city ordinance or by motion or resolution of the city council or created as a result of federal, state or local grants;

3. Any advisory board, commission or task force created and appointed by the mayor and approved by the city council; or

4. Any standing committee of any body specified in subsections (B)(1), (B)(2) or (B)(3) of this section.

“Body” shall not mean any congregation or gathering which consists solely of employees of the city of Benicia or consists of employees and representatives of companies providing employees’ benefits including, but not limited to, retirement and health care plans.

C. “Criticize” means to provide verbal or written critical comments, regarding the official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.

D. “Days” means calendar days.

E. “Department” means a department of the city of Benicia.

F. “Information request facilitator” means the person who shall assist members of the public with their public information requests. For general requests, it means the city clerk in accordance with BMC 4.20.030(D). For department-specific requests, it means the department director or designee.

G. “Interrupt” means to stand and raise one’s hand and, in accordance with Robert’s Rules of Order, wait for recognition by the presiding officer before speaking.

H. Meeting.

1. “Meeting” shall mean any of the following:

a. A congregation of a majority of the members of any body in which any item within its subject matter jurisdiction is heard, discussed or deliberated;

b. Any use of direct communication, personal intermediaries or communications media to cause a majority of the members of a body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereon; and

c. Any meal or social gathering of a majority of the members of a body immediately before, during, or after a meeting of a body. For the purposes of this definition, “immediately before” means the four hours prior to a meeting.

2. “Meeting” shall not include any of the following:

a. Individual contacts or conversations between a member of a body and any other person;

b. The attendance of any number of the members of a body at a conference, or at any meeting or gathering organized to address a topic of local community concern and which is open to the public; provided, that a majority of the members of a body refrains from collectively discussing, other than as part of the scheduled program, the topic of the meeting or gathering or any other business within the subject matter jurisdiction of that body;

c. The attendance of any number of the members of any body at a purely social, recreational, educational or ceremonial occasion; provided, that a majority of the members of any body refrains from discussing any business within the subject matter jurisdiction of the body; and provided, that the gathering does not qualify as a meeting under subsection (H)(1)(c) of this section; and

d. The attendance of a majority of the members of a body at a standing committee; provided, that the members of the body who are not members of the standing committee do not participate personally or through representatives.

I. "Notice" means the posting of an agenda in a location that is freely accessible to the public 24 hours a day and as additionally specified in BMC 4.08.030, 4.08.050 and 4.08.060.

J. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications.

K. "Public official" means all elective officials and members of all official boards, commissions and committees of the city.

L. "Online" shall mean accessible by computer without charge to the user.

M. "The Public Records Act" shall mean Government Code Section 6250 et seq.

N. "Ralph M. Brown Act" shall mean Government Code Section 54950 et seq.

O. "Software or hardware failure" means solely technological failures of software or hardware that are unforeseeable. This term includes failures such as those caused by natural disasters or acts of God, and technical failures against which the city has taken customary precautions.

P. "Standing committee" shall mean any number of members of a body which totals less than a quorum and which has (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution or formal action of the body.

Q. "Weeknight" shall mean after 5:00 p.m. on any day of the week except for Saturday or Sunday. (Ord. 07-22 § 1; Ord. 06-11 § 1; Ord. 05-06 § 1).

Chapter 4.08 PUBLIC ACCESS TO MEETINGS

Sections:

- 4.08.010 Meetings to be open and public – Application of Brown Act.
- 4.08.020 Conduct of meetings for public agencies covered by this title.
- 4.08.030 Notice requirement – Emergency meeting.
- 4.08.040 Conduct of business – Time and place for meeting.
- 4.08.050 Notice and agenda requirements – Regular meetings.
- 4.08.060 Notice and agenda requirement – Special meetings.
- 4.08.070 Agenda packets as public records – Agenda subscribers.
- 4.08.080 Barriers to attendance prohibited.
- 4.08.090 Public testimony at regular and special meetings.
- 4.08.100 Minutes and recordings.
- 4.08.110 Public comment by members of bodies.
- 4.08.120 Agenda descriptions and oral disclosures.
- 4.08.130 Statement of reasons for closed sessions.
- 4.08.140 Conduct of closed session.
- 4.08.150 Disclosure of closed session discussions and actions.
- 4.08.160 Ex-parte communications.

4.08.010 Meetings to be open and public – Application of Brown Act.

All meetings of bodies defined in BMC 4.04.050 shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.) unless greater public access is

required by this chapter, in which case this chapter shall be applicable. (Ord. 05-06 § 1).

4.08.020 Conduct of meetings for public agencies covered by this title.

To the extent not inconsistent with state or federal law, a body may require, as a condition of any express delegation of power to any public agency, including joint powers authorities, whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency at which an item concerning or subject to the delegated power is discussed or considered shall be conducted pursuant to the Ralph M. Brown Act. (Ord. 05-06 § 1).

4.08.030 Notice requirement – Emergency meeting.

Emergency meetings shall be held in accordance with Government Code Section 54956.5 which states:

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

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

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

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

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this Section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

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

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

(e) The minutes of a meeting called pursuant to this Section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the roll call 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.

(Ord. 05-06 § 1).

4.08.040 Conduct of business – Time and place for meeting.

A. Unless proscribed by council ordinance, every body established by city council ordinance shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action. Whenever reasonably possible bodies shall conduct their regular meetings on weeknights except when the body determines that the subject matter would be more appropriately discussed at another time.

B. Regular and special meetings of every body shall be held within the city of Benicia except to do any of the following:

1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the body is a party;
2. Inspect real or personal property which cannot be conveniently brought to Benicia; 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 multi-agency significance that are outside Benicia. However, any meeting or discussion held pursuant to this subsection shall take place within the jurisdiction of one of the participating agencies and be noticed by all participating agencies. Agencies include local agencies such as school districts, counties, cities or other public agencies as specified in the Brown Act; or

4. Meet outside the city of Benicia with elected or appointed officials of the United States or the state of California or counties.

C. If a meeting is held outside of the city, the location of the meeting shall be posted in the city.

D. If a regular meeting for any body falls on a holiday, the meeting shall be held on the next scheduled regular meeting day unless otherwise noticed as a special meeting for which notice is given at least six days in advance.

E. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the presiding official of the body or his or her designee. The change of meeting site shall be announced, by the most rapid

means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.

F. If a quorum of a body becomes present at a meeting of a standing or ad hoc committee of said body, the body may not take action at the meeting of the committee unless the meeting has been properly noticed as a meeting of the body itself. The standing or ad hoc committee of a body may take action at the meeting consistent with the committee's jurisdiction and authority.

G. Every body shall ensure that video screens or presentation boards are reasonably viewable by both the body and the public.

H. To ensure business is conducted in the open, bodies should avoid taking breaks during discussion of a particular agenda item. If a break is needed or if the item is continued to a future meeting, each member of the body shall disclose orally on the public record the general nature of any conversations during the break or continuance pertaining to the item.

I. Unless proscribed by council ordinance, each body established by ordinance shall establish and publish an annual schedule of regular meetings. (Ord. 07-02 § 1; Ord. 06-11 § 2; Ord. 05-06 § 1).

4.08.050 Notice and agenda requirements – Regular meetings.

A. Six-Day Advance Notice Requirement for Regular Meetings of Bodies. The city council, and any body defined in BMC 4.04.050, shall provide notice before any regular meeting by:

1. Posting a copy of the agenda in a location freely accessible to the public 24 hours a day no later than six days before the date of the meeting;

2. Filing a copy of the agenda and a complete agenda packet with the office of the city clerk and the Benicia Public Library no later than five days before the date of the meeting; and

3. Posting a copy of the agenda online at the city's web site no later than six days before the date of the meeting. Notwithstanding this subsection, the failure to timely post a copy of the agenda because of software or hardware failure, as defined, shall not constitute a defect in the notice for a regular meeting, if the body complies with all other posting and noticing requirements.

B. Supplemental Agenda and Related Material Requirements for Regular Meetings of Bodies.

1. Notwithstanding the notice provisions of subsection (A) of this section, a posted agenda or agenda-related materials may be amended or supplemented no later than 72 hours before a regular meeting and only for the following reasons or under the following conditions. The amended or supplemented posted agenda or agenda-related materials shall state for the record what supplemental or amended material is under consideration and/or how the agenda is proposed to be amended. Agendas or agenda-related materials, may only be amended or supplemented:

a. To add an item due to an emergency or urgency, provided the body makes the same findings as required by subsection (D) of this section before taking action;

b. To deleted or withdraw any item from a posted agenda;

c. To provide additional information to supplement the agenda-related material previously filed with the office of the city clerk; provided, that the additional information was not known to staff;

d. To correct technical, nonsubstantive errors or omissions, or to change a stated financial amount that decreases the body's obligation under a proposed agreement, or to clarify the agenda title in a manner that does not substantively change the nature of the action to be taken on the agenda item;

e. To consider the recommendations, referrals, minutes or actions taken on any item heard by a standing committee of the city council; provided, that the item has not been materially changed by the committee or materially changed after the committee considered the item; or

f. To continue an agenda item to the next regular meeting of the body so long as members of the public are given an opportunity to address the body on the item at the meeting from which the item is continued.

2. If substantial supplemental information is received from the applicant or a member of the public less than 72 hours prior to a regular meeting, the body shall either (1) automatically continue the item to the next regular meeting or a special meeting, or (2) decide that there was adequate notice to allow consideration of the additional information. Substantial supplemental information is written information that (1) could not be said or read within the oral public comment period, (2) is, according to a majority vote of the body, too technical or detailed to be readily understood, and (3) is new information not discussed in prior staff report or documents previously provided to the body.

C. Excuse of Open Government Notice Requirements. If an item appears on an agenda but the body fails to meet any of the additional notice requirements under this section, the body may take action only if:

1. The minimum notice requirements of the Brown Act have been met; and

2. The body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:

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

b. There is a need to take immediate action which relates to federal or state legislation or the body's eligibility for any grant or gift; or

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

D. Action on Items Not Appearing on the Agenda. Notwithstanding subsection (C) of this section, a body may take action on items not appearing on a posted agenda only if:

1. The matter is an emergency. Upon a determination by a majority vote of the body that work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or

2. The matter is urgent. Upon a determination by a two-thirds vote of those present, 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 which came to

the attention of the body after the agenda was posted; that there was adequate public notification considering the subject matter to be considered; and that the need to take immediate action:

- a. Is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
- b. Relates to federal or state legislation; or
- c. Relates to a purely ceremonial or commendatory action.

E. Nothing in this section shall prohibit a body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to subsection (D) of this section before or during a meeting.

F. Nothing in this section shall prohibit the office of the city attorney from conforming a document to comply with technical requirements as to form and legality. (Ord. 09-19 § 1; Ord. 07-03 § 1; Ord. 05-06 § 1).

4.08.060 Notice and agenda requirement – Special meetings.

A. If the presiding official or senior staff member to the body finds that waiting for the next available regular meeting of the body would make it impossible to take meaningful action or the regular meeting will be cancelled due to a lack of quorum or a city holiday, a special meeting of any body may be called at any time by the presiding official thereof or by the senior staff member to the body. All bodies calling a special meeting shall provide notice by:

1. Posting a copy of the agenda in a location freely accessible to the public at least 72 hours (excluding Saturday, Sunday and holidays) before the time of the meeting set forth in the agenda. The posting time for a special meeting due to the body's regular meeting falling on a holiday shall be six days;

2. Filing a copy of the agenda and a complete agenda packet with the office of the city clerk and the Benicia Public Library at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda.

3. Delivering a copy of the agenda to each member of the body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least 24 hours before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

B. Bodies specified in BMC 4.04.050 shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting online at the city's web site at least 72 hours before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware failure, as defined, shall not constitute a defect in the notice for a special meeting if the body complies with all other posting and noticing requirements.

C. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the body except that the body may designate an alternative meeting location; provided, that such alternative location is specified in the agenda.

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

E. Special meetings may not be scheduled on the same day as a previously scheduled regular meeting that was not noticed in compliance with this chapter if the special meeting is called to consider any of the items that were included in the notice for such regular meeting. (Ord. 09-20 § 1; Ord. 05-06 § 1).

4.08.070 Agenda packets as public records – Agenda subscribers.

In addition to providing access to all records which are public records pursuant to the California Public Records Act (Government Code Section 6250 et seq.) and this title, every body specified in BMC 4.04.050 shall make available for immediate public inspection and copying all agendas and agenda-related materials.

A. All agendas shall be posted on the city's web site and the city's cable channel and available at the Benicia Public Library. Complete agenda packets for each body shall be posted on the city's web site to the extent fiscally and technologically feasible and shall be available for review at the Benicia Public Library and at the city manager's office during normal business hours. The time for compliance with this subsection shall be in accordance with the time of the posting of the agenda for the meeting.

B. All agendas of every body shall be available to the public by an email subscription. Such service shall be provided free of charge and shall be provided to the subscriber until the request for the service is cancelled by the subscriber or the email address is no longer valid. The email shall be sent at the time of the posting of the agenda for the meeting. The city clerk shall establish the email subscribers list for the city council agendas. The secretary to other bodies shall establish and maintain the email subscribers list for the respective bodies.

C. Paper copies of the agenda and agenda packet shall be available to members of the public for every body upon payment of the fee established by city council resolution. Every body shall establish a subscription list for the agenda and/or agenda packet so that members of the public may subscribe to the agenda and/or agenda packet upon payment of the fee established by the city council. The fee shall not exceed the direct costs of copying the agenda and agenda packet and the reasonable mailing costs of the agenda and agenda packet. In order to enhance public participation and involvement, the fees for the agenda subscription shall be waived for anyone who reports on city government and makes the reports available to members of the public. Subscriptions for the agenda and/or agenda packet shall be valid for one year. The city clerk or the secretary to other bodies shall send the subscriber a note to resubscribe and pay the subscription fee with the last agenda and/or agenda packet that is mailed to a subscriber.

D. Every body shall make available for immediate public inspection and copying the agenda packet that has been distributed to a majority of its members. The right to immediate public inspection and copying provided in this section shall not include any material exempt from public disclosure under this title or under state or federal law. Neither this section nor the California Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that Act or this title.

E. All requests by agenda subscribers to receive agendas or agenda-related materials may be made by mail, telephone or email to the office of the city clerk or city manager's office. The city clerk shall maintain a list of all bodies and shall immediately forward a copy of the written request to the appropriate body to ensure compliance with the request.

F. Notwithstanding any other provision of this title, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this section shall not constitute grounds for invalidation of the actions of the body taken at the meeting for which the agenda or the agenda-related material was not timely received. (Ord. 05-06 § 1).

4.08.080 Barriers to attendance prohibited.

A. No body specified in this title shall conduct any meeting, conference or other function in any facility which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever a body anticipates that the number of persons attending the meeting may exceed the legal capacity of the room, a public address system or television shall be used to the extent technologically and fiscally reasonable to permit the overflow audience to listen to the proceedings.

B. Any person attending an open meeting of a body shall have the right to record, photograph or broadcast the proceedings unless such activities constitute a persistent disruption of the proceedings. (Ord. 06-11 § 3; Ord. 05-06 § 1).

4.08.090 Public testimony at regular and special meetings.

A. Every agenda for every regular or special meeting shall provide a public comment section on the agenda as an opportunity for members of the public or for members of the body to directly address a body on items of interest to the public that are within the body's subject matter jurisdiction; provided, that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2 and BMC 4.08.050(D). Except as provided in subsection (C) of this section, speakers shall limit their comments during the public comment section of the agenda to nonagendized items.

B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. Public comments on closed session items shall be taken before the closed session is convened. The presiding official of any body may request speakers representing similar views to designate a spokesperson in the interest of time. Spokespersons for the proponent(s) of an agenda item and for the opponent(s) shall each have 15 minutes to present their case. The spokesperson for the proponent(s) shall have five minutes to present any rebuttal. Other speakers may be requested to keep their remarks concise.

C. At the presiding official's discretion, the official may grant up to 10 minutes to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the body's consideration of those items. Such comments shall be made under the public comment part of the agenda.

D. Every body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. Except as otherwise provided by this section, it shall be the policy of the city that all speakers are entitled to up to five minutes of speaking time per agenda item.

E. Members of the public who speak on an agenda item or under public comment do not have to give their name or address should they choose not to.

F. Written material submitted by members of the public shall be retained as part of the official agenda file and available for review by other members of the public in accordance with Chapter 4.12 BMC.

G. No body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, even if the criticism implicates the performance of one or more public employees. Nothing in this subsection shall confer any privilege or protection beyond that which is otherwise provided by law. (Ord. 07-04 § 1; Ord. 06-04 § 1; Ord. 05-06 § 1).

4.08.100 Minutes and recordings.

A. All bodies shall record the minutes for each regular and special meeting convened under the provisions of this chapter. At a minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the body began and ended any closed session, any letters submitted on agenda items, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each meeting shall be available for inspection and copying upon request within the shortest possible time after the meeting. No later than five business days after the meeting at which the minutes are adopted, the officially adopted minutes shall be available for inspection and copying upon request and shall be posted on the city's web site.

B. Every body specified in BMC 4.04.050 and established by city ordinance shall make an audio and where possible economically and technically a visual recording of every open regular meeting. Other bodies shall audiotape each regular and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying. For the city council and bodies established by ordinance, the recording shall not be erased, deleted or destroyed for at least four years. For all other bodies, the recording shall not be erased, deleted or destroyed for at least two years. If, during the four- or two-year period, a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the body. (Ord. 05-06 § 1).

4.08.110 Public comment by members of bodies.

Every member of a body retains the rights of any citizen to comment publicly on the wisdom or propriety of government actions, including those of the body of which

he or she is a member. Bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials to express their judgments or opinions, including those judgments or opinions pertaining to the disclosure or nondisclosure of discussions or actions taken in closed session. However, the release of specific factual information made confidential by state or federal law including, but not limited to, privileged attorney-client communications, other than by the procedures set forth under state law or this title, may constitute grounds for censure or for an action for injunctive or declaratory relief by the body. Nothing in this section shall confer any privilege or protection for expression beyond that which is otherwise provided by law. (Ord. 05-06 § 1).

4.08.120 Agenda descriptions and oral disclosures.

A. Agendas for meetings shall provide a brief description of the item under consideration. To the extent appropriate, information that should be described includes the following: the commonly used name and location of the property under consideration; names of proposed appointees, contractors or parties to an agreement; and the general nature of the action(s) under consideration. The use of acronyms, jargon and "double speak" should be avoided.

B. Closed session descriptions shall comply with the permissive provisions of Government Code Section 54954.5 in describing items for closed session.

C. In the case of an item added to the agenda pursuant to Government Code Section 54954.2(b) or BMC 4.08.050(D), the statement shall be made in open session concurrent with the findings required pursuant to that section.

D. Any action taken on items that are not described in accordance with this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1. (Ord. 05-06 § 1).

4.08.130 Statement of reasons for closed sessions.

A. Prior to adjourning to any closed session, a body shall announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed.

B. In the case of a closed session item added to the agenda pursuant to Government Code Section 54954.2(b) or BMC 4.08.050(D), the statement shall be made in open session concurrent with the findings required pursuant to that section.

C. No minutes for a closed session, but a tape recording of the closed session shall be made. The tapes shall remain confidential pursuant to Government Code Section 54960 unless the body elects to disclose the information in accordance with BMC 4.08.150(B) or a court orders disclosure.

D. Nothing in this section shall require or authorize a disclosure of information that is confidential under law. (Ord. 06-11 § 4; Ord. 05-06 § 1).

4.08.140 Conduct of closed session.

A. A body shall consider in closed session only those matters specified in the statement required in BMC 4.08.130.

B. The following provisions of the Brown Act apply to the conduct of closed session by bodies and are hereby incorporated by reference as though fully set

forth herein: Government Code Sections 54956.8; 54956.9; 54956.95; 54957; and 54957.6.

C. No minutes for a closed session, but a tape recording of the closed session shall be made. The tapes shall remain confidential pursuant to Government Code Section 54960 unless the body elects to disclose the information in accordance with BMC 4.08.150(B) or a court orders disclosure. (Ord. 05-06 § 1).

4.08.150 Disclosure of closed session discussions and actions.

A. In accordance with Government Code Section 54963 and as provided below, a person present at a closed session may not disclose confidential information received.

B. In addition to the required disclosures pursuant to Government Code Section 54957.1 and subsection (C) of this section, the body may, by motion and vote in open session, elect to disclose any other information obtained in closed session which a majority of the members of the body deems to be in the public interest. Any disclosure pursuant to this section shall be made through the presiding official or such other person present in the closed session, designated to convey the information.

C. Immediately following the closed session a body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

1. Real Property Negotiations. Approval of an agreement concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval requires action from another party to the negotiations, the body shall disclose the fact of its approval, the substance of the agreement and the body's vote or votes thereon after the other party or its agent has informed the body of its action upon (a) inquiry by any person, and (b) in any event, at the next meeting of said body. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or if there are multiple contiguous or closely located properties that are being considered for transfer, the report specified in this section need not be made until the conditions have been satisfied or an agreement has been reached with respect to all the properties, or both.

2. Litigation. Direction or approval given to the body's legal counsel to prosecute, defend, seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the body's intentions would not be contrary to the public interest. The report shall identify the names and capacities of all parties to the litigation, the court of jurisdiction and case number, the type of case, any existing claim or order to be defended against, or any factual circumstances or contractual dispute giving rise to the litigation.

3. Settlement. If a body accepts a settlement offer signed by an opposing party, the body shall report its vote of approval and identify the substance of the

agreement. If final approval rests with another part or with the court, the body shall disclose its vote of approval and the substance of the agreement to any person upon inquiry as soon as the settlement becomes final, but in no case later than the next meeting following final approval of settlement. A body shall neither solicit nor agree to any term in a settlement agreement which would preclude the release, upon request, of the text of the settlement agreement itself and any related documentation communicated to or received from the adverse party or parties. Where the disclosure of documents in settled litigation could affect litigation on a closely related case, the report, settlement agreement and any documents described in this section need not be disclosed until the closely related case is settled or otherwise finally concluded.

D. Reports required to be made pursuant to this section may be made orally or in writing. Copies of any contracts, settlement agreements, or other documents related to the items or transactions that were finally approved or adopted in closed session and which contain the information required to be disclosed under this section shall be made available for inspection and copying, upon request, at the time the report is made or after any substantive amendments have been retyped into the document.

E. A written summary of the information required to be reported immediately pursuant to this section, or documents containing that information, shall be made available for inspection and copying by the close of business on the next business day following the meeting.

F. Action taken in closed session which is not immediately disclosable under this section shall be disclosed and noticed under the procedures set forth in subsection (C) of this section at such time as disclosure is required. (Ord. 05-06 § 1).

4.08.160 Ex-parte communications.

While it is the city's policy to encourage communications between the public and officials, the city recognizes that Constitutional due process protections may limit communications with council members or board or commission members outside of a public meeting. Therefore, the city's policy on ex-parte communications discourages officials from discussing appeals or enforcement matters with members of the public except during the body's formal consideration of the matters. These matters should not be discussed during site inspections or field trips that are not part of an agendized meeting. If such discussions take place, officials must publicly disclose at the start of the agendized presentation of the item, the substance of any such discussions they have had with anyone other than another member of the body or staff member. This policy applies to any appeal or enforcement matter which is pending, or is reasonably expected to come before the body on which the official sits. (Ord. 05-06 § 1).

Chapter 4.12 PUBLIC INFORMATION

Sections:

- 4.12.010 Release of documentary public information.
- 4.12.020 Release of oral public information.

- 4.12.030 Public review file – Policy body communications.
- 4.12.040 Non-exempt public information.
- 4.12.050 Disclosure requests.
- 4.12.060 Immediate disclosure request.
- 4.12.070 Withholding restrictions.
- 4.12.080 Justification for withholding.
- 4.12.090 Fees for copying.
- 4.12.100 Web site information.
- 4.12.110 Requests made by email.
- 4.12.120 Policy regarding purchase and use of computer systems.

4.12.010 Release of documentary public information.

Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this chapter. The provisions of Government Code Section 6253.9 are incorporated herein by reference. (Ord. 05-06 § 1).

4.12.020 Release of oral public information.

Release of oral public information shall be accomplished as follows:

A. Every department director shall be responsible for being knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The department will make every effort to facilitate the information requested and will make it a top priority.

B. It shall be the duty of the department director (or designee) or, in the case of requests not directed to a specific department, the city clerk to provide information on a timely and responsive basis to the public. It shall also be their duty to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

C. Public employees and city board, commission or committee members shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the city, department, board, commission or committee and does not materially misrepresent the city, department, board, commission or committee's position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action. (Ord. 05-06 § 1).

4.12.030 Public review file – Policy body communications.

Every body specified in BMC 4.04.050 shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing pertaining to the body's duties which the clerk or secretary of such body has distributed to, or

sent on behalf of, a quorum of the body concerning a matter that has been placed on the body's agenda within the previous 30 days or is scheduled or requested to be placed on the agenda within the next 30 days. Excepted from the communications file shall be commercial solicitations, mail sent bulk-rate, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this title. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file; provided, that the letter or memorandum of transmittal is included in the communications file and the reports, studies or analyses are readily available for review. (Ord. 05-06 § 1).

4.12.040 Non-exempt public information.

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.

B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.

C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):

1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:
 - a. Sex, age and ethnic group;
 - b. Years of graduate and undergraduate study, degree(s) and major or discipline;
 - c. Years of employment in the private and/or public sector;
 - d. Whether currently employed in the same position for another public agency;
 - e. Other non-identifying particulars as to experience credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the positioning in question.
2. The job description of every employment classification.
3. The resumes of employees, although personal information such as home address shall be deleted.

4. Any adopted memorandum of understanding between the city and a recognized employee organization.

D. Law Enforcement Information.

1. The Benicia police department shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Unless disclosure of the records sought is prohibited by other provisions of state or federal law such as the TNG Order, records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the district attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. The final decision for disclosure shall be made by the city council and the vote and reasoning of each city council member shall be made public on all nondisclosures. Such redacted information may include:

- a. The names of juvenile witnesses or suspects;
- b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- c. The identity of a confidential source;
- d. Secret investigative techniques or procedures;
- e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or
- f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.

2. The Benicia police department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

E. Contracts, Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract.

F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:

1. Any proposed or adopted budget for the city, including any of their respective agencies, departments, programs, projects or other categories, which

have been submitted to a majority of the members of the city council, or their standing committees.

2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social, legal or other services whose records are confidential by law. The nonconfidential portion, if any, of such records shall be disclosed.

G. Email correspondence retained in the ordinary course of business and not exempt from disclosure shall be made available within three working days upon written or oral request. All such email shall be maintained for two years before being destroyed. (Ord. 05-06 § 1).

4.12.050 Disclosure requests.

A. Notwithstanding any other provision of law and subject to the requirements of this section, a written or oral request to inspect or obtain copies of public records that is submitted to any department or to any body shall be satisfied no later than five business days unless the requestor is advised in writing within one business day that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;
2. The requested records are in the possession of the department processing the request;
3. The requested records are stored in a location outside of the department;
4. The requested records likely comprise a voluminous amount of separate and distinct writings;
5. Reasonably involves another department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request.

B. All determinations made pursuant to subsections (A)(1) through (A)(5) of this section shall be communicated in writing to the requestor within five business days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than 10 business days after the written determination pursuant to subsections (A)(1) through (A)(5) of this section is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state a number by which the requestor may be contacted.

C. The person seeking the information need not state a reason for making the request or the use to which the information will be put, but shall be advised that providing such information may help the city assist the person finding all documents responsive to their request.

D. Unless the record request will be satisfied within one business day, an acknowledgement of receipt of the request or notification that additional time is needed pursuant to subsection (A) of this section shall be sent to the requestor if an address has been provided. (Ord. 05-06 § 1).

4.12.060 Immediate disclosure request.

A. An immediate disclosure request is a request for (1) public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials, within the past calendar year, or (2) public records such as statements of economic interests that have, by other law, a requirement to be disclosed within a specific shortened time frame. All immediate disclosure requests shall describe the records sought in as focused and specific language as possible so they can be readily identified and shall state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted.

B. Notwithstanding any other provision of law and subject to the requirements of this section, a written or oral request to inspect or obtain copies of public records pursuant to an immediate disclosure request that is submitted to any department or to any body shall be satisfied at the earlier of the time required by other law or no later than two business days unless the requestor is advised in writing within two business days that additional time is needed because of the volume of records sought or because the records do not qualify as subject to the immediate disclosure request procedure.

C. All determinations made pursuant to subsection (B) of this section shall be communicated in writing to the requestor within two business days of the date of the request. If additional time is needed or if the records do not qualify for an immediate disclosure request, the request shall be processed in accordance with BMC 4.12.050. (Ord. 05-06 § 1).

4.12.070 Withholding restrictions.

A. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law.

B. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review. (Ord. 05-06 § 1).

4.12.080 Justification for withholding.

Any withholding of information shall be justified, in writing, as follows:

A. A withholding under a permissive exemption in the California Public Records Act or this title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.

B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.

C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

D. The final decision for withholding information shall be made by the city council. The matter shall be scheduled for action at the next regularly scheduled city council meeting unless such meeting is more than 30 days from the date of the request for action by the council. In the event that the next regular meeting is more than 30 days away, a special meeting shall be called. If the council decides records should

be disclosed, the records shall be disclosed not later than 5:00 p.m. of the next business day following the council meeting unless the council specifies some other time. Each council member's vote and general reason shall be given and recorded in public. Detailed reasons need not be provided when such disclosure would compromise privacy or confidential matters or would subject the city to litigation. (Ord. 07-05 § 1; Ord. 05-06 § 1).

4.12.090 Fees for copying.

A. No fee shall be charged for making public records available for inspection.

B. No fee shall be charged for a single copy of a current meeting agenda.

C. A fee may be charged for:

1. Single or multiple copies of past meeting agendas or any agenda-related materials;

2. Multiple copies of a current meeting agenda; and

3. Any other public record copied in response to a specific request.

D. The city may, rather than making copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.

E. All drafts or final environmental impact reports and environmental impact statements shall be posted either on the city's web site or on the consultant's web site.

F. In addition to the copies routinely required for city official or staff use, the city shall require the applicant for a project that is, or will be, of widespread public interest to pay for up to 20 copies of documents such as environmental impact reports. These copies will be provided on a first-come, first-serve basis at no cost to members of the public. The city manager or designee shall determine if and how many extra copies will be required on a case by case basis.

G. All fees permitted under this section shall be determined and specified in the city of Benicia master fee schedule, as amended. When the cost of writing a receipt and collecting the fees required under this section would exceed the cost of the copies, the copying fee shall be waived. The master fee schedule shall note the maximum amount that may be waived.

H. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with state law. (Ord. 06-11 § 5; Ord. 05-06 § 1).

4.12.100 Web site information.

Each department shall make an effort to ensure its portion of the city's web site is kept current. Each department shall also post public documents that are of interest to a wide number of the public. (Ord. 05-06 § 1).

4.12.110 Requests made by email.

To ensure that email requests are received, records requests made by email shall not be effective until acknowledged by a return email of the city. Immediately upon receipt of an email request for records, the employee shall promptly acknowledge the request by a return email. Departments may establish a designated staff member or designated email address to receive email records requests. (Ord. 05-06 § 1).

4.12.120 Policy regarding purchase and use of computer systems.

A. It is the policy of the city to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this chapter. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall select these systems to ensure convenient, efficient, and economical public access to records.

B. Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

1. Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.
2. Implementing a system that permits paper reproduction of electronic copies of records.

C. Nothing in this section shall be interpreted to require the city to use a system that would prevent it from complying with the security requirements of the state and federal governments for accessing their records. (Ord. 05-06 § 1).

Chapter 4.16 ETHICS

Sections:

- 4.16.010 Policy.
- 4.16.020 Responsibilities of public office and employment.
- 4.16.030 Declaration of open government awareness.
- 4.16.040 Dedicated service.
- 4.16.050 Fair and equal treatment.
- 4.16.060 Use of public property.
- 4.16.070 Obligations to citizens.
- 4.16.080 Conflict of interest.
- 4.16.090 Disclosure of conflict of interest.
- 4.16.100 Representation before bodies.
- 4.16.110 Gifts.

4.16.010 Policy.

The proper operation of city government requires that: (1) public officials and employees be independent, impartial and responsible to the people; (2) government decisions and policy be made using the proper channels of government; and (3) that public office or employment not be used for personal gain. (Ord. 05-06 § 1).

4.16.020 Responsibilities of public office and employment.

Public officials and employees are bound to uphold and carry out the Constitution of the United States, the Constitution of the state of California, and the law and regulations of the city. Public officials and employees shall observe in their official acts the highest ethical standards and discharge faithfully the duties of their offices

or employment regardless of personal considerations. Public officials and employees shall recognize that the public interests must be their primary concern; that they fulfill the public trust invested in them by their conduct; and that conduct in their official affairs should be above reproach. (Ord. 05-06 § 1).

4.16.030 Declaration of open government awareness.

All employees who are required to fill out conflict of interest forms pursuant to the Political Reform Act and the city's conflict of interest code and all public officials shall sign an annual statement stating that they have read the rest of this title, Open Government, and have attended or will attend when next offered, a training session on open government, to be held at least once annually. The statements shall be maintained by the city clerk's office and shall be available as public record. Annual training shall also be provided to city employees who regularly respond to requests for information by the public. All such trainings will be conducted by the city attorney's office with the assistance of the open government commission. (Ord. 07-23 § 1; Ord. 05-06 § 1).

4.16.040 Dedicated service.

Public officials and employees shall not exceed their authority or breach the law or ask others to do so. Public officials and employees shall work in full cooperation with other public officials and employees unless prohibited from doing so by laws or regulations including, but not limited to, attorney-client privilege, privacy or confidentiality laws. (Ord. 05-06 § 1).

4.16.050 Fair and equal treatment.

Except in the case of moving an agenda item up on a particular agenda, preferential consideration of the request or petition of an individual person, group, business or entity shall not be given. No person, group, business or entity shall receive special advantages beyond that which are available to any other person, group, business or entity. (Ord. 05-06 § 1).

4.16.060 Use of public property.

No public official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such property is available to the public generally or when such use is incidental as provided by city policy including city manager administrative instructions. No public official or employee shall use the time of any city employee, while said employee is on duty, for personal convenience or profit. (Ord. 05-06 § 1).

4.16.070 Obligations to citizens.

No public official or employee shall use their official position to grant, or assist in granting, any special (whether negative or positive) consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen in the same circumstances. (Ord. 05-06 § 1).

4.16.080 Conflict of interest.

A. Incorporation of the California Political Reform Act. No public official or employee shall make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision in which the public official or employee knows or has reason to know he or she has a disqualifying conflict of interest within the meaning of California Government Code Section 87100 et seq., and any subsequent amendments to those sections. Members of advisory bodies not subject to the Political Reform Act may make, participate in making, or in any way use or attempt to use their official positions to influence decisions on matters within the purview of their body. In the interest of open government, members of all bodies are encouraged to disclose economic interests that are not conflicts under the Political Reform Act.

B. Incorporation of Government Code Section 1090 Et Seq. No public official or employee shall make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 et seq. and any subsequent amendments to those sections.

C. Future Employment. No public official or employee shall make, participate in making, or in any way use or attempt to use his or her official position to influence a decision of the city, affecting a person or entity with whom the public official or employee is discussing or negotiating an agreement concerning said public official or employee's future employment. This prohibition shall be for a period of one year from the beginning of the discussion or negotiation or completion of the negotiation on future employment.

D. Incompatible Activity or Employment. Public officials and employees shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with their assigned duties as a public official or employee. (Ord. 07-06 § 1; Ord. 05-06 § 1).

4.16.090 Disclosure of conflict of interest.

A. Public officials and employees shall disclose on the public record any personal, professional or business relationships with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the official or employee where, as a result of the relationship, the ability of the official or employee to act for the benefit of the public could reasonably be questioned. For the purposes of this section, the minutes of a public meeting at which the governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the offices of the city official or the employee's department, shall constitute the public record.

B. Penalties. A court may void any governmental decision made by a public official or employee who fails to disclose a relationship as required by subsection (A) of this section if the court determines that the failure to disclose was willful.

C. Regulations. The open government commission may recommend regulations for adoption by the city council setting forth the types of personal, professional and business relationships that must be disclosed pursuant to this section. (Ord. 05-06 § 1).

4.16.100 Representation before bodies.

No public official on a decision making body shall represent a client, a person or group before the board, commission, committee or the city council on which the public official presently sits. (Ord. 05-06 § 1).

4.16.110 Gifts.

In conformance with the gift limits imposed by California Government Code Section 89503 and any subsequent amendments to that section, no official or employee of the city shall accept any gift, reward, service or gratuity of any kind in excess of the amount set forth pursuant to the Political Reform Act per single source as defined by the Political Reform Act regulations in a calendar year by reason of their employment or office. The provisions of Government Code Section 89503 and the related regulations shall be used to interpret the provisions of this section. (Ord. 07-24 § 1; Ord. 06-11 § 6; Ord. 05-06 § 1).

Chapter 4.20 OPEN GOVERNMENT COMMISSION

Sections:

- 4.20.010 Open government commission.
- 4.20.020 Administrative review and appeal process.
- 4.20.030 Responsibility for administration.
- 4.20.040 Enforcement of ethics chapter.

4.20.010 Open government commission.

A. Duties. In the implementation of this title, the commission shall:

1. Advise the city council and provide information to other city departments and bodies on appropriate ways in which to implement this title with a priority on simple, standard procedures.
2. Assist in citywide training for implementing the title.
3. Develop and maintain an administrative process for review and enforcement of this title.
4. Propose amendments to the city council of this title as needed.
5. Report to the city council on any practical or policy problems encountered in the administration of this title.

B. The commission shall consist of five members of the public. All commission members shall have a demonstrated interest in open and ethical government through such activities as, but not limited to, attendance at meetings of government bodies, requests for documents from government agencies, disseminating information about government to others, and familiarity with the Brown Act and/or Public Records Act. All members shall be without known conflicts of interest and shall be residents of the city to the extent possible.

C. The commission will meet as needed, but at least quarterly, unless otherwise directed by the city council.

D. The commission shall provide an annual report on implementation and compliance with this title. (Ord. 08-05 § 2; Ord. 05-06 § 1).

4.20.020 Administrative review and appeal process.

A. An administrative review and appeal process is hereby established to review whether a meeting was held in violation of this title or records were withheld in violation of this title. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act. Further, such administrative review process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor.

B. Such review process shall include an:

1. Appeal to the city manager who shall make a decision within seven days of the appeal. (This step shall not apply in cases involving the city manager or members of the city council.)

2. Appeal of the city manager's decision to either the commission or a three-member panel of city attorneys, at the option of the person appealing the decision. The commission or three-member panel of city attorneys, as the case may be, shall first review the matter to determine if they have jurisdiction over the matter. If the complaint involves allegations that meetings were held in violation of this title or records were withheld in violation of this title, then they have jurisdiction to hear the matter and may hear the matter in accordance with the procedures established by resolution of the open government commission. The decision on jurisdiction is final unless judicial review is initiated.

3. If the commission or a three-member panel of city attorneys reviews whether a meeting was in violation of this title or records were withheld in violation of this title, their decision may be appealed to the city council. The decision of the city council is final.

C. Enforcement.

1. Upon the conclusion of the administrative review process, as implemented pursuant to subsection (B) of this section, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this title.

2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a body has violated this title. The costs and fees shall be paid by the body and shall not become a personal liability of any public official or employee of the body.

3. If the litigation is judged to be frivolous by the court, the defendant body may assert its right to be paid reasonable court costs and attorneys' fees.

D. Mediation. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any body, agency or department may demand immediate mediation of his or her request with the Solano County courts mediation service or some mutually agreed-upon person who agrees to volunteer his or her time serving as mediator.

E. Cure and Correction.

1. Nothing in this title shall prevent a body from curing or correcting an action challenged on grounds that a body violated any material provision of Chapter 4.08 BMC. A body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure

and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

2. In the event the commission, upon the conclusion of a formal hearing conducted pursuant to its administrative review process, determines that a body violated any material provision of this title, the body shall agendaize for the challenged action to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1) – (4), inclusive.

F. Reports or Recommendations from Meetings Alleged to Have Been Held in Violation of This Title. If the sole purpose or nature of an action that is challenged for violation of this title is to make or convey an advisory report or recommendation to another body, such body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said body to hear or take action on the item in the absence of such report or recommendation.

G. Penalties. The penalty for violation of this title by an elected or appointed official shall be commensurate with the violation and may include penalties, such as censure, including findings of fact and a determination, which shall be given to media selected by the commission.

H. Limitation of Actions. No person may file a complaint with the commission alleging violation of the notice provisions of BMC 4.08.050 if he or she attended the meeting or had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken. (Ord. 07-08 § 1; Ord. 05-06 § 1).

4.20.030 Responsibility for administration.

A. The city manager shall administer and coordinate the implementation of the provisions of this title for all bodies, agencies and departments under his or her authority, responsibility or control.

B. The city attorney shall staff, or provide staff for, the commission to permit the commission to fulfill the functions and duties set forth herein. The city attorney shall provide the commission with legal assistance, to the extent such assistance does not constitute a conflict.

C. The city clerk in the case of the city council and the assigned department in the case of other bodies shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it.

D. The city clerk or designee shall act as information request facilitator to assist members of the public with acquiring the information they seek. If it will take longer than 48 hours (excluding Saturdays, Sundays, and holidays) to obtain the information requested by a member of the public then the city clerk will provide a written concise explanation of how and when the information will be made available. (Ord. 05-06 § 1).

4.20.040 Enforcement of ethics chapter.

The city council, and not the open government commission, shall be the enforcement body for alleged violations of Chapter 4.16 BMC. This process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor. In the

event of an allegation of a violation of the ethics provisions of this title, the matter shall first be referred to the city attorney for a determination as to whether there is a substantial likelihood that an ethics violation occurred. If substantial cause exists, the city council shall use the administrative process set forth above to resolve the matter except the option of referral to the commission in BMC 4.20.020(A)(2) shall be omitted. In the case of an allegation of an ethics violation committed by an elected official, the process shall proceed directly to the city council for a determination. (Ord. 05-06 § 1).

BROWN ACT

**OPEN MEETING LAWS
(Proposition 59 and the Brown Act)**

**Proposition 59
California Constitution, Article I § 3**

§ 3. Assembly, petition, open meetings

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

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(California Government Code)
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§ 54950. Declaration of public policy

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. Title of act

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

§ 54951. “Local agency”

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.

§ 54951.1. [Section repealed 1994.]

§ 54951.7. [Section repealed 1994.]

§ 54952. “Legislative body”

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

- (a) The governing body of a local agency or any other local body created by state or federal statute.
- (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.
- (c)(1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
 - (A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

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

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

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

§ 54952.1. Electee

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

§ 54952.2. "Meeting"

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

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

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

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

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

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

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

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

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

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

§ 54952.3. [Section repealed 1994.]

§ 54952.5. [Section repealed 1994.]

§ 54952.6. “Action taken”

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

§ 54952.7. Copy of chapter

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.

§ 54953. Open and public meetings; Teleconferencing; Teleconference meetings by health authority

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

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

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

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

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

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

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision

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

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

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

~~(4) This subdivision shall remain in effect only until January 1, 2009.~~

§ 54953.1. Grand jury testimony

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.

§ 54953.2. Americans With Disabilities Act

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

§ 54953.3. Registration of attendance

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

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the

document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 54953.5. Recording proceedings

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

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

§ 54953.6. Restrictions on broadcasts of proceedings

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.

§ 54953.7. Access to meetings beyond minimal standards

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.

§ 54954. Rules for conduct of business; Time and place of meetings

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

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

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

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

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

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

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

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

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

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

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

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

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

§ 54954.1. Request for notice; Renewal; Annual Fee

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

§ 54954.2. Posting of agenda; Non-agendized matters, Exceptions

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

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

to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

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

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

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

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

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

§ 54954.3. Public comment at regular meetings

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

(b) 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.

(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.

§ 54954.4. State reimbursements; Legislative intent; Review of claims

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

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

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

§ 54954.5. Description of closed session items

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

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

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(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 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

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

Agency claimed against: (Specify name)

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

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

CONFERENCE WITH LABOR NEGOTIATORS

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

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

or

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

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

CASE REVIEW/PLANNING

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

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

REPORT INVOLVING TRADE SECRET

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

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

HEARINGS

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

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

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

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

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

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

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

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

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

AUDIT BY BUREAU OF STATE AUDITS

§ 54954.6. Public meeting on new or increased general tax or assessment; Notice

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

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

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

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

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

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

(E) Standby or immediate availability charges.

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

(b)(1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision.

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

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

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

(B) The activity to be taxed.

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

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

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

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

(c)(1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property 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).

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

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

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

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

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

(1) The property owners subject to the assessment.

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

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

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

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

§ 54955. Adjournment of meetings

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

§ 54955.1. Continuance of hearing

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 recontinued 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.

§ 54956. Special meetings; Notice

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.

§ 54956.5. Emergency meetings; Notice

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

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

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

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

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

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

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

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

§ 54956.6. Fees

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

§ 54956.7. Closed session regarding application from person with criminal record

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.

§ 54956.75. Closed session for response to final draft audit report from the Bureau of State Audits

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

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

§ 54956.8. Closed sessions regarding real property negotiations

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

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

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

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

§ 54956.81. Closed sessions regarding purchase or sale of pension fund investments

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

§ 54956.86. Closed session for health plan member

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.

§ 54956.87. Disclosure of records and information; Meetings in closed session

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the

management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

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

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

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

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of 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.

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

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

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

§ 54956.9. Closed sessions concerning pending litigation; Lawyer-client privilege

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:

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

(b)(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.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(3) For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) 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.

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(C) 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.

(D) 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.

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

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

(c) 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.

§ 54956.95. Closed sessions regarding insurance pools or joint powers authority losses

(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.

§ 54956.96. Disclosure of specified information in closed session of joint powers agency; Authorization of designated alternate to attend closed session; Closed session of legislative body of local agency member

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

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

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

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

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

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

§ 54957. Closed session regarding public security, facilities, employees, national security, examination of witness

(a) 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, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a

threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b)(1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

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

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

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision 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 subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

§ 54957.1. Public report of action taken in closed session; Form; Availability; Actions for injury to interests

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

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

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

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any

person, as soon as the other party or its agent has informed the local agency of its approval.

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

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

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

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

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

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

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

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the

close of the investment transaction or the transfer of pension fund assets for the investment transaction.

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

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

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

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

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

§ 54957.2. Minute book for closed sessions

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

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

§ 54957.5. Agendas and other writings as public records; Distribution

(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 an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

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

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

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

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) 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 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). 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. Closed sessions regarding salaries and benefits

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

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

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

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

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

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

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

§ 54957.7. Disclosure of items to be discussed at closed session

(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. Closed sessions of multijurisdictional drug law enforcement agencies

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

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

§ 54957.9. Authorization to clear room where meeting willfully interrupted; Readmission

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.

§ 54957.10. Closed sessions regarding application for early withdrawal of deferred compensation plan funds

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

§ 54958. Application of chapter

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

§ 54959. Criminal penalty for violation of chapter

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.

§ 54960. Proceeding to prevent violation of chapter; Recording closed sessions; Procedure for discovery of tapes

(a) The district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to 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 audio record its closed sessions as hereinafter provided.

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

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

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

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session 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 audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

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

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

(ii) 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 alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

§ 54960.1. Proceeding to determine validity of action; Demand for correction

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

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

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

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

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to

commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

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

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

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

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

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

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

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

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

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

§ 54960.5. Costs and attorney fees

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.

§ 54961. Meeting place with discriminatory admission policies; Identification of victim of sexual or child abuse

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

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

§ 54962. Prohibition against closed sessions except as expressly authorized

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

§ 54963. Disclosure of confidential information acquired in closed session prohibited; Disciplinary action for violation

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

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

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

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

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

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

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

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

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

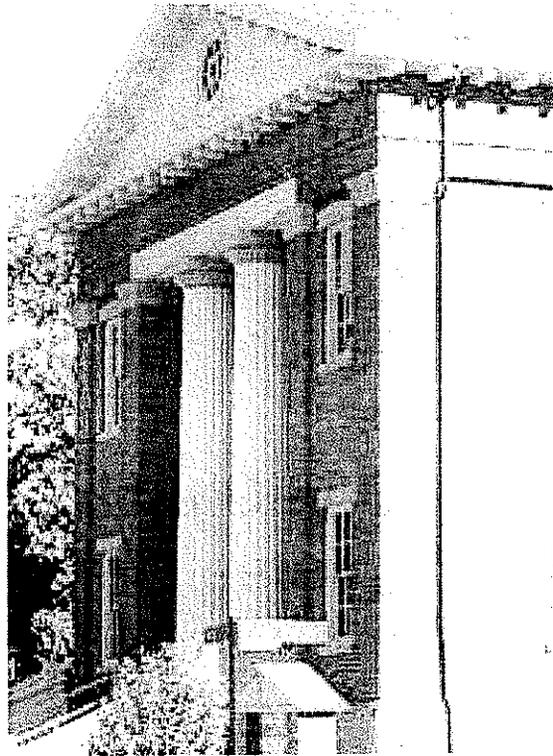
(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

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

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

PARTICIPATING IN
CITY COUNCIL MEETINGS

Your Guide To:
Benicia City Council
Meetings



Benicia City Hall
250 East L Street
Benicia, CA 94510
Tel: (707) 746-4200
Fax: (707) 747-8120
www.ci.benicia.ca.us

Participating in City Council Meetings

The City of Benicia and the City Council encourage all members of the public to participate in City government and attend City Council meetings. This guide provides information to help you participate more effectively.

Location: City Council Chambers, City Hall- 250 East L Street

Time: 1st and 3rd Tuesday of each month at 7:00 p.m. in the Council Chambers. Special meetings may occur earlier or on different days.

Here are some general tips for participation in meetings:

- You may speak during the Public Comment period of the agenda for five minutes on a topic not on the agenda, so long as the subject relates to the business of the City Council.
- If you wish to speak, it is requested, but not required, that a Speaker Card be filled out and presented to the City Clerk at the beginning of the meeting.
- You may speak on any item on the agenda once given recognition by the Mayor.
- Speakers must adhere to the time limits, using the time limit lights as indicators of how much time is remaining.
- When groups wish to address the Council on one topic, a spokesperson from the group may be requested and given up to fifteen minutes.
- Comments and statements should be addressed to the Council, not the audience.
- Applauding or other displays of approval or disapproval are inappropriate for Council meetings.
- Subscribe by email or check the website to receive agendas ahead of time.
- Copies of the agenda packet are available in the City Clerk's Office, online and at the Library.
- Submit written information ahead of time. Early submission allows more time for the Council to consider your comments.
- Please turn off your cell phone or set it to vibrate.

The City is committed to providing access to all of its citizens. For disability-related accommodations, contact the Human Resources Manager Valerie Ruxton at 746-4211.

Regular City Council Agenda Sections

Announcements: Brief note on any information that does not require action.

Appointments: Swearing in of any new committee members.

Presentations: Special presentations by a Council member or staff member, including Mayor's Proclamations or special recognitions.

Proclamations: Official recognition of events and individuals.

Public Comment: Specific period during the meeting allowing time for the public to speak on any topic *not* on the agenda that is within the subject matter jurisdiction of the City Council.

Consent Calendar: Routine items for which a staff recommendation has been prepared. A public member or Council member may request that an item be pulled from the consent agenda and discussed following the consent calendar.

Public Hearings: Should not exceed one hour in length. To maximize public participation, the Council requests that speakers be concise.

Action Items: Recommendations by department heads that are likely to require discussion prior to Council action.

Informational Items: Reports from the city manager and reports from council members on outside committee meetings.

Council Member Reports: Requests made by members of the Benicia City Council

Terms:

Ordinances: Permanent acts of the Council, "legislative acts" that may be repealed by a subsequent ordinance. Most ordinances must be introduced (first reading) and "adopted" (second reading) at two separate Council meetings at least five days apart.

Resolutions: Express the policy of the Council on programs or items, or direct types of action; can be changed with subsequent resolution and are approved at a single meeting.

City Council

The Benicia City Council consists of five members: the Mayor and five Council Members, each elected to four-year terms. The Council selects one of its members to be Vice Mayor.

City Government

The City of Benicia, a general law city, operates under the Council-Manager form of government. Over 300 cities in California operate under this form of government which is in use worldwide. Under the system, the City Council appoints a City Manager and City Attorney. Members of the City's boards and commissions are appointed by the mayor and are subject to confirmation by the Council.

The City Manager is the professional administrator for the City, serving as its "CEO" while advising the City Council. Responsibilities include operations of the City, including administration, personnel relations, preparation of the city budget, and implementation of the Council's policies.

Another key role of the City Manager is to appoint all staff, except the City Attorney, to manage the City. The executive management team for the City includes: the City Manager, City Attorney, Police Chief, Community Development Director, Fire Chief, Finance Director, Library Director, Parks and Community Services Director, Public Works Director, and the Administrative Services Director. Under each of these key management executives, a team of staff members takes on the responsibility of each department.

The City Council sets the policy and the City Manager implements it. Together, the City Council works hand-in-hand with the City Manager, with support and resources from City employees and the involvement of the Benicia community.

Contacting Your Council Members

The Benicia City Council is elected to listen to your concerns. In addition to attending City Council meetings, assisting on projects, and serving on boards, commissions, and agency boards, the council members are also interested in hearing your thoughts, ideas, and comments.

While all council members have e-mail addresses, you may also contact a council member via letter or telephone. Letters may be sent or delivered to Benicia City Hall at the following address:

250 East L Street
Benicia, CA 94510

Contact Information:

Elizabeth Patterson, Mayor

Elizabeth.Patterson@ci.benicia.ca.us
(707) 746-4212

Alan Schwartzman, Vice Mayor

Alan.Schwartzman@ci.benicia.ca.us
(707) 746-4213

Tom Campbell, Council Member

Tom.Campbell@ci.benicia.ca.us
(707) 746-4213

Mark Hughes, Council Member

Mark.Hughes@ci.benicia.ca.us
(707) 746-4213

Mike Ioakimedes, Council Member

Mike.ioakimedes@ci.benicia.ca.us
(707) 746-4213

Meeting Dates & Times

The public is always encouraged to attend meetings of the City Council, boards, commissions, and committees.

Council/Commission/Board	Date	Time
Benicia Zoning Administrator Hearing	Meet as necessary	
City Council	1 st & 3 rd Tuesdays	7 pm
City Council/School Board Liaison Committee	Quarterly	8:30 am
Arts and Culture Commission	2 nd Thursday*	7 pm
Civil Service Commission	3 rd Tuesday	6:30 pm
Community Sustainability Commission	3 rd Monday	7 pm
Economic Development Board	4 th Wednesday	5:30 pm
Finance, Audit & Budget Committee (FAB)	Friday after 1 st Council meeting	8 am
Historic Preservation Review Commission	4 th Thursday	6:30 pm
Housing Authority Board	4 th Wednesday	6 pm
Human Services and Arts Board	2 nd Monday	7:15 pm
Board of Library Trustees	2 nd Monday	6:30 pm
Open Government Commission	Quarterly	5 pm
Parks, Recreation & Cemetery Commission	2 nd Wednesday	6:30 pm
Planning Commission	2 nd Thursday	7 pm
Sky Valley Open Space Committee	Quarterly	7 pm
Traffic, Pedestrian & Bicycle Safety Committee	Quarterly	7 pm
Youth Action Coalition	4 th Wednesday	3:30 pm
Youth Commission	1 st Monday	5 pm
Youth Master Plan Steering Committee	1 st Wednesday	4 pm

* Every other month

For more information, contact City Hall at 746-4200 or check the City's Website at: www.ci.benicia.ca.us.

MEETING VENUES

Commission Room:

City Hall
250 East L Street

Conference Room 1:

City Hall
250 East L Street

Conference Room 2:

City Hall
250 East L Street

Council Chambers:

City Hall
250 East L Street

Doña Benicia Room:

Benicia Public Library
150 East L Street

Edna Clyne Room:

Benicia Public Library
150 East L Street

Fire Station II:

150 Military West

Other locations may be used on occasion.
Please check the meeting agenda.

This guide has been prepared to provide helpful tips for attending City Council and other city meetings.

Please contact the City Clerk, City Manager or City Attorney's Office if you have additional questions.

If you have suggestions for improving this guide, please contact the City Attorney's Office at (707) 746-4216.



January 2010

OPEN GOVERNMENT TIPS



OPEN GOVERNMENT TIPS FOR EFFECTIVE MEETINGS

DISCLOSE EX PARTE COMMUNICATIONS

BACKGROUND: In *quasi-judicial* matters, when the Council, Planning Commission, Historic Preservation Review Commission, Civil Service Commission or other Board or Commission is deciding the facts of a particular case applicable to a specific piece of property, an abatement matter, a use permit or variance, personnel appeals, license revocations, or an appeal of a lower level decision, it is extremely important for members of the decision-making body to refrain from contacting either party to the dispute or their attorneys. These types of *ex parte* (outside of the record) contacts can give rise to legal attack against the City for violation of due process rights. You are supposed to make your decision based solely on evidence produced at the hearing. If you have received evidence outside of the hearing, and the substance of that contact was not disclosed at the commencement of the hearing so as to give all parties an opportunity to respond and contest it, a court may find that the City's hearing violated the Constitutional due process rights of either party, thus subjecting the City to liability.¹ This policy applies to any *quasi-judicial* matter which is pending, or is reasonably expected to come, before the body on which the official sits.²

BEST PRACTICE – NO EX PARTE COMMUNICATIONS: In matters involving *quasi-judicial* decisions, particularly where the matter is controversial and being contested, and in any enforcement action or appeal of a prior decision, the best practice is for you to avoid all *ex parte* communications about the item. In these types of contested cases, you should refrain from contacting the parties or their attorneys, or getting involved in the dispute prior to the hearing, so as to preserve your ability to make your decision based solely on the evidence produced at the hearing.

DISCLOSURE OF EX PARTE COMMUNICATIONS: If you do get involved in an *ex parte* discussion, you must publicly disclose the substance of any such discussion at the start of the agenda presentation of the item. However, it is not enough just to indicate that you spoke to a party, such as the applicant, or to the neighbors who are contesting the application or project. To ensure due process, you need to disclose what was learned during the conversation so that all parties have an opportunity to respond.³

SITE VISITS: These types of matters should not be discussed during site inspections or field trips that are not part of an agenda meeting. Although individual site visits are allowed and encouraged, they should be disclosed so that your specific observations can be made part of the record.

LEGISLATIVE ACTS: In *legislative* actions, generally applicable to the city as a whole (such as most ordinances), not only is it appropriate to speak and receive information from your constituents, but that is part of your duties as elected and appointed officials. For Open Government purposes, it is suggested that you disclose the information you received outside of the hearing. This is because if the information is important for your decisionmaking process, it may also be important for the other decision makers to hear and consider.

¹ The concern regarding *ex parte* contacts only applies to *quasi-judicial* actions, where the decision making body is acting like a court.

² See also Benicia Municipal Code Section 4.08.160.

³ Any questions or concerns regarding *ex parte* communications and what should be disclosed on the record should be discussed prior to the meeting with the City Attorney.



OPEN GOVERNMENT TIPS FOR EFFECTIVE MEETINGS

HOW TO MAKE A MOTION

Background: In a public meeting, it is important for the public to understand what action is taken by the decision making body. It is not always easy to follow what action a public body is proposing if a motion is made that does not specify with sufficient detail the item and the actual action that is being proposed. This handout is designed to assist the public official in calling for action on both simple and complex items.

Simple Items With Little Or No Discussion: For certain items on the agenda, very little if any discussion is needed. Approval of the consent calendar is an example. If the mayor or chair asks for a motion to approve the consent calendar, an individual need merely to respond “so moved”¹ or “I move to approve the consent calendar.” This approach may be used for other actions by inserting the identity of the item to be approved.

More Complex Items With Discussion: For items involving a detailed staff report, complex issues, controversy or a great deal of public discussion, it is important for any motion to clearly identify what action is being proposed by the decision making body and the identity of the project or item. This eliminates confusion and allows anyone entering the meeting (or turning on the television) to understand what item is being discussed and the action that is being proposed. It also creates a clean record for the decision making body.

Staff reports generally include a “*recommendation*” section that can be read as an actual motion if this is the action that the decision making body wishes to follow. However, any deviation from the recommendation or changes in the conditions of approval must be cited. For example, a motion to approve a conditional use permit might be made as follows:

“I move to approve a conditional use permit for Good Grub Restaurant located at 360 Main Street to permit outdoor eating subject to the findings and conditions in the attached resolution, with the one change in condition #6 that the bar area must be closed at midnight.”

The illustrated motion contains the action, the description and location of the project, cites the resolution and the findings and conditions of approval, as well as a proposed change in one of the conditions of approval.

A decision not to follow a staff recommendation should include findings of fact to support the decision. For example, such a motion contrary to the one made above would be:

“I move to reject the application for a conditional use permit for outdoor eating to Good Grub Restaurant located at 360 Main Street based on the fact there are residential neighbors on two sides of the restaurant that are currently experiencing noise and other problems from the restaurant that would only increase if outdoor dining were permitted.”

If this motion were passed, staff would have sufficient information to prepare a resolution rejecting the application for a conditional use permit based on actual findings.

During a meeting, the City Attorney (or staff advisor if there is no City Attorney staffing the meeting) can assist in properly framing a motion if there is any question as to how an action should be proposed.

¹ This is because the motion requested has already been articulated.



OPEN GOVERNMENT TIPS FOR EFFECTIVE MEETINGS DISCLOSE A CONFLICT OF INTEREST

BACKGROUND: Government Code Section 87105 sets forth the requirements of what statements and actions a public official must take if he/she has a financial conflict of interest under the Political Reform Act on an item that is on the agenda for discussion or action.¹ This memo is intended to inform members of the City Council and other City Commissions and Boards when and how to properly disclose a conflict of interest on the record, as well as what to do when such an item is being considered.

WHEN TO DISCLOSE A CONFLICT OF INTEREST: A conflict of interest on an item must be disclosed as soon as the item is announced, but immediately prior to any presentation or consideration of the item. In such cases, it is best to inform the Mayor or Chairperson that you have a conflict of interest on a particular item so that they can make sure you have an opportunity to make your disclosure prior to any discussion of the item.

WHAT TO SAY/HOW MUCH TO DISCLOSE: It is not enough to state that you have a conflict of interest. Pursuant to Government Code Section 87105, you must provide *sufficient detail to inform the public why you have a conflict of interest.*

Conflict Due to Residence: If the conflict of interest is due to the location of your residence, you do not need to provide the address of your residence. However, you do need to state that you reside within 500 feet of the item under consideration.

Conflict Due To Business: If the conflict is due to the location of your business, you should disclose that reason and provide the address of your business.

WHAT TO DO DURING DISCUSSION OF THE ITEM: Once the conflict has been disclosed on the record, you must leave the room completely until after the discussion or action on the item is completed. You are not allowed to sit in the audience.

Exceptions: There are two exceptions to this requirement:

- 1) If the item is on the consent calendar, you may remain seated unless another member removes the item from the consent calendar for further discussion.
- 2) If you or an immediate family member have a personal interest in the item due to complete ownership of a residence or business that is impacted by the decision, you may speak during the public comment portion of the item.

¹ Any question regarding whether or not you may have a conflict of interest should be discussed prior to the meeting with the City Attorney.

CODE OF CONDUCT



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

Preamble

The residents and businesses of Benicia are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. The effective functioning of democratic government therefore requires that:

- Public officials, both elected and appointed, comply with both the letter and spirit of the laws and politics affecting the operations of government;
- Public officials be independent, impartial and fair in their judgment and actions;
- Public office be used for the public good, not for personal gain; and
- Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Benicia City Council has adopted a Code of Conduct for members¹ of the City Council and the City's commissions to assure public confidence in the integrity of local government and its effective and fair operation.

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

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

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

¹ For ease of reference in the Code of Conduct and unless the context indicates otherwise, the term "Council Member" or "member" refers to any member of the Benicia City Council or any of the City's boards, commissions or committees established by the City Council.

City of Benicia Code of Conduct

1. **Acts in the Public Interest**

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Benicia and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the City Council and the City's commissions².

2. **Comply with the Law**

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

3. **Conduct of Members**

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

4. **Respect for Process**

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

5. **Conduct at Public Meetings**

Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of the meetings. Members shall commit to practice civility and decorum in discussions and debates. Members shall commit to honoring the role of the Chair in maintaining order, keeping discussion on track, and focusing discussion on agenda items at hand. Members shall avoid debate and argument with the public. Members shall not engage in personal attacks of any kind under any circumstance.

6. **Decisions Based on Merit**

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

² For ease of reference in the Code of Conduct and unless the context indicates otherwise, the term "commissions" refers to any of the City's commissions, boards or committees established by the City Council.

- 7. Communication**
Members shall publicly share substantive information that is relevant to a matter under consideration by the Council or commission, which they may have received from sources outside of the public decision-making process.
- 8. Conflict of Interest**
In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest.
- 9. Gifts and Favors**
Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.
- 10. Confidential Information**
Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
- 11. Use of Public Resources**
Members shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.
- 12. Representation of Private Interests**
In keeping with their role as stewards of the public interest, members of the Council shall not appear on behalf of the private interests of third parties before the Council or any commissions or proceedings of the City, nor shall members of commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.
- 13. Advocacy**
Members shall represent the official policies or positions of the City Council or commissions to the best of their ability when designated as delegates. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Benicia, nor will they allow the inference that they do.
- 14. Policy Role of Members**
Members shall respect and adhere to the council-manager structure of city government as provided by state law and City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, commissions, and City Staff.

Members therefore shall not interfere with the administrative functions of the City or the professional duties of City Staff; nor shall they impair the ability of staff to implement Council policy decisions. Members should refrain from:

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

15. Independence of Boards and Commissions

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

16. Positive Work Place Environment

Members shall support the maintenance of a positive and constructive work place environment for City employees and for residents and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

17. Implementation & Enforcement

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

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

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

The Benicia Code of Conduct expresses standards of ethical conduct expected for members of the City Council and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

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

I affirm that I have read and understand the City of Benicia Code of Conduct.

Signature

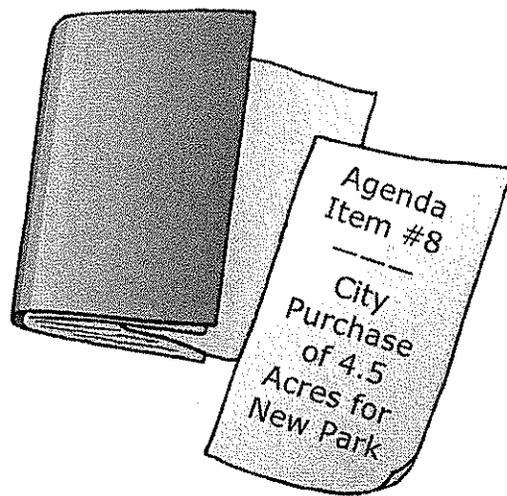
Date

Print Name

CAN I VOTE?

Can I vote?

**A Basic Overview
Of Public Officials'
Obligations Under the
Political Reform Act's
Conflict-of-Interest Rules**



**California
Fair Political
Practices
Commission**

“My home is near the proposed new shopping mall. Can I vote on the issue at next month’s Planning Commission meeting?”

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act’s conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the “big picture” level and to help guide you to more detailed resources.

Stripped of legal jargon:

➤ You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that



**Fair
Political
Practices
Commission**

Toll-free Advice Line: 1-866-ASK-FPPC

the outcome of the decision will have an important impact on your economic interests, **and**

➤ a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act “on general principles” or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

An important note...

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code §§81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC’s web site, <http://www.fppc.ca.gov>. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line — **1-866-ASK-FPPC** — as far in advance as possible.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

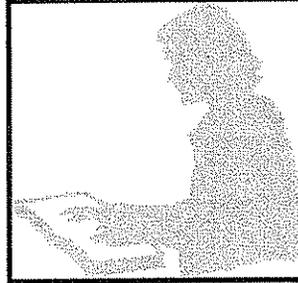
Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most — if not all — mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**
- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

On the next page are the eight steps:

Eight steps to help you decide



Step One: Are you a “public official” within the meaning of the rules?

Step Two: Are you making, participating in making, or influencing a governmental decision?

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

Step Six: The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

Step Seven: If you have a conflict of interest, does the “public generally” exception apply?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

Public Official

Step One — Are you a “public official,” within the meaning of the rules?

The Act’s conflict-of-interest rules apply to “public officials” as defined in the law. This first step in the analysis is usually a formality — you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency’s conflict-of-interest code, you are a “public official.” If you file a Statement of Economic Interests (Form 700) each year, you are a “public official” under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency’s legal counsel or the FPPC.

Governmental Decision

Step Two — Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the

conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- **Make** a governmental decision (for example, by voting or making an appointment).
- **Participate** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- **Influence** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion* or *judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

When you have a conflict — Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Library and Publications section of the FPPC's website at <http://www.fppc.ca.gov>.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must pub-

licly identify in detail the economic interest that creates the conflict, step down from the dais **and must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.

-
- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

— *The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.*

— *Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she **may not** sit in the public area and listen to the discussion.*

— *Supervisor Robertson rents a home to a county employee. The county employee is the sub-*

*ject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session **but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him.** He may not attend the closed session or obtain any non-public information from the closed session.*

Economic Interests

Step Three — What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.

-
- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.

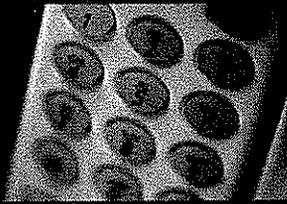
"The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise."

- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income — a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent or more of a business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.
- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has

given you gifts which total \$360 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the “personal financial effects” rule. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision has a “personal financial effect” on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.



FPPC
Toll-free Advice Line:
1-866-ASK-FPPC
(1-866-275-3772)

Directly or Indirectly Involved?

Step Four — Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in — and therefore directly affected by — a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations

if you have questions as each case arises. Note also that the next step in the analysis — applying the right standard to determine whether an impact is material — depends in part on whether the interest is directly or indirectly involved. The regulations — Sections 18704 through 18704.5 — and other helpful information can be found on the FPPC’s web site, <http://www.fppc.ca.gov>.

Materiality (Importance)

Step Five — What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word “material” is akin to the term “important.” You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called “materiality standards,” that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your

"Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them."

-- California Political Reform Act of 1974

agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
- The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards

distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six — Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does “sufficiently likely” mean? Put another way, how “likely” is “likely enough?” The Political Reform Act uses the words “reasonably foreseeable.” The FPPC has interpreted these words to mean “substantially likely.” Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are

met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

“Public Generally” Exception

Step Seven — If you have a conflict of interest, does the “public generally” exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the “public generally” exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The “public generally” exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific seg-

ments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the “public generally” exception can be found on the FPPC website at <http://www.fppc.ca.gov> under regulations 18707-18707.9.

Are you required to participate?

Step Eight — Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This “legally required participation” rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act’s conflict-of-interest laws:

-
- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.
 - Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.
 - Understand the “big picture” of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.
 - Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much — if not more — on the facts of your particular situation as it does on the law.
 - Don't try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the “big picture.” You'll then be able to look up or ask about the particular rules you need to apply to any given case.
 - Don't be afraid to ask for advice. It is available from your agency's legal counsel and from the FPPC.



How To Contact Us:

Mail:

Fair Political Practices Commission
428 J Street, Suite 620
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Website:

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Telephone:

Toll-free advice line:

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Regular line: 1-916-322-5660

Enforcement hot-line:

1-800-561-1861

**Fair Political
Practices Commission**



BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING MINUTES

Thursday, December 10, 2009

7:00 P.M.

I. OPENING OF MEETING

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Richard Bortolazzo, Don Dean, Rick Ernst, Rod Sherry, Lee Syracuse, Brad Thomas and Chair Dan Healy

Absent: None

Staff Present: Damon Golubics, Principal Planner
Heather Mc Laughlin, City Attorney
Mike Roberts, Acting City Engineer
Rhonda Corey, Senior Administrative Clerk
Raquel Walsh, Recording Secretary

- C. Reference to Fundamental Rights of Public -** A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

Damon Golubics announced the receipt of new correspondence just prior to the start of the regular meeting. Correspondence was received from DP&F Law Corporation and William D. Kopper Attorney at Law.

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**
None.
- B. PUBLIC COMMENT**
None.

IV. CONSENT CALENDAR

Commissioner Dean requested a change in wording be made to the last paragraph of page six, replacing the words “stated that” to “asked if”, in reference to the obvious advantages to applicants to have a development agreement with the City.

On motion of Commissioner Sherry, seconded by Commissioner Ernst, the Consent Calendar was approved, with the amendment to the minutes noted above, by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas, and Chair Healy
Noes: None
Absent: None
Abstain: None

- A. **Approval of Agenda**
- B. **Approval of Minutes of November 12, 2009**

V. REGULAR AGENDA ITEMS

- A. **REVIEW OF A PREVIOUSLY APPROVED 2001 USE PERMIT (CONDITIONS OF APPROVAL) FOR THE CHEVRON GAS STATION AND CONVENIENCE MARKET AT 10 SOLANO SQUARE** *(Continued Public Hearing Item from*

November 12, 2009)

PLN 2000-1 Use Permit

10 Solano Square, APN: 087-200-100

PROPOSAL:

The Planning Commission will review and consider previously imposed conditions of approval for Use Permit PLN 2000-1, Chevron Gas Station and Convenience Market. Based on Benicia Municipal Code Section 17.128, the Community Development Director shall determine if there are reasonable grounds for reconsideration of a Use Permit and whether the Planning Commission shall take appropriate action to remedy any documented violation of the use permit conditions of approval. Evidence shall be presented by staff at the public hearing suggesting one condition of approval is not being followed or implemented by the permittee.

Recommendation: The Planning Commission should take public testimony, and determine whether there are violations of the original conditions of approval for the Chevron Gas Station and Convenience Market located at 20 Solano Square and consider the proposed amendments to the conditions of approval to remedy any such violation.

Damon Golubics informed the Commission that the meeting scheduled November 30, 2009 at 6:00pm took place with two individuals from the impacted neighborhood and five representatives from Chevron in attendance. He noted that Chevron has improved their efforts to maintain the trash and landscaping around their business during the past thirty days. He also reaffirmed Chevron’s commitment to keep it well maintained in the coming years and asked the Commission to formally accept and approve a Memorandum

of Understanding between Chevron and the City of Benicia related to the Chevron Station located at 10 Solano Square.

Commissioner Bortolazzo indicated that the Commission was told they could not see the complaints regarding this issue. Additionally, he commented that this issue could have been handled a lot better administratively by calling the people to clean the mess up rather than bringing back to the Commission for reconsideration of their use permit.

Commissioner Ernst asked what would happen if Chevron does not continue to maintain the area. Damon Golubics stated that it would be considered non-compliant and Chevron would be brought back to the Commission again.

On motion of Commissioner Syracuse, seconded by Commissioner Thomas, the above Resolution was approved by the following vote:

Ayes:	Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas, and Chair Healy
Noes:	None
Absent:	None
Abstain:	None

B. ROSE CENTER USE PERMIT FOR REDUCED PARKING

09PLN-95 Use Permit

2100 - 2158 Columbus Parkway, APNs: 079-020-63, 079-020-64 & 079-020-65

PROPOSAL:

As a result of a recent court decision, the owner of the Rose Center shopping center is required to obtain a use permit for reduced parking. A revised site plan approved at the staff-level contained 146 spaces: 97 standard, 42 compact, and 7 disabled (including one van accessible). It is anticipated that evidence will be presented at the Planning Commission meeting that the parking demand will be less than what is required in Schedule A in Benicia Municipal Code Section 17.74.030 and that the probable long-term occupancy of the shopping center, based on its design, will not generate additional parking demand.

Recommendation: Approve a parking reduction Use Permit for Rose Center shopping center located at 2100-2158 Columbus Parkway, based on the Findings and Conditions of Approval set forth in the proposed Resolution.

Damon Golubics announced the receipt of new correspondence just prior to the start of the regular meeting from Thomas Carey of DP&F Law Corporation and William D. Kopper Attorney at Law.

Commissioner Sherry recused himself from the discussion as he stated his firm provided civil engineering and surveying services for the Rose Center Project.

Chair Healy deferred to City Attorney McLaughlin for clarification on the letter submitted by Mr. Kopper. City Attorney McLaughlin noted that the first issue regarding the letter is whether the letter constitutes substantial supplemental information under the open government ordinance. She explained that the Commission should make a determination whether the information could not be reasonably stated within the speaking period, or if it brings up things that have not been considered before. If either were true, then it would be substantial supplemental information. After reviewing the letter, City Attorney McLaughlin stated that it didn't seem like there was anything new. She continued that the letter refers to CEQA, and does not think the CEQA determination that staff has put in the report is insufficient. It argues about the parking and says that the Commission/City is acting prematurely on this agenda item. City Attorney McLaughlin also indicated the letter's argument is that the City should wait until the final court of appeals decision is remitted back down to the trial court. She noted that it is the staff's opinion, as well as the applicant, that the City does not need to do that. She explained that the Planning Commission has full authority to act on its own behalf regarding the agenda item and consideration of parking reduction.

Chair Healy asked whether the Commission was free to act on the use permit regardless of whether the Commission has been directed to do so. City Attorney McLaughlin agreed that the Commission was free to act. Chair Healy also inquired about the issue of a remittitur and the number of days for a petition for review of an appellate decision. City Attorney McLaughlin noted that the deadline for a remittitur expired the prior day. Chair Healy spoke about the court being directed to act as well as the Commission being directed to act consistent with the appellate opinion, which became final when there was no appeal. Chair Healy mentioned the issue of litigation based on an appeal and indicated that if the time to appeal the decision has run out, the Commission is to be governed by that decision.

Damon Golubics gave a brief overview of the parking reduction use permit as a result of a recent court decision, adding that the owner of the Rose Center is required to obtain a use permit for parking reduction. In addition, Damon Golubics gave a history of the project, noting the original plan, revised project, and the changes made to the project. He noted that the applicant submitted a parking evaluation and traffic study produced by Crane Transportation Group. Damon Golubics referenced three critical findings included in the staff report and resolution that are important for the Commission's decision.

Commissioner Dean asked about the proposed use permit with relation to a variance procedure. Damon Golubics explained that in other jurisdictions, parking reduction is handled through a variance process. He noted that findings are a bit easier for a use permit, and that Benicia approaches parking reduction in that way.

Commissioner Dean also inquired about the staff report and asked if the parking reduction for the Rose Center was covered under the environmental analysis in the Western Gateway EIR. Damon Golubics deferred to the City Attorney, who explained

that the 1989 EIR contemplated development of the entire project area, so projects of this nature would be allowed, and the reduction of parking would be covered by this as well.

Commissioner Ernst asked if the level of authority of the acting director was set by a dollar amount of a given project. Damon Golubics stated that there is relative broad authority for a director to make a decision on whether a project changes in a minor way or a major way and the director has the authority to make minor changes to projects that have been approved by various commissions. Commissioner Ernst noted the overall number of parking spaces reduced from the original approved plan by the Planning Commission in 2003. He indicated that the decision by the director caused the subsequent events that transpired and the court's decision to bring the item back to the Commission. Damon Golubics agreed.

Chair Healy opened the public hearing.

Thomas Carey - Representative land use attorney, 809 Coombs Street in Napa - He spoke on behalf of the applicant. His opinion of Mr. Kopper's letter was that it attempted to raise questions in the process by which the parking study was done. He emphasized that the study is actual empirical evidence based on existing use. He added that the study before the Commission is a much better basis for a decision than the theoretical constructs that are raised in Mr. Kopper's letter. He added that the two findings that are necessary to grant the use permit for parking reduction are clear. He indicated the first finding is parking demand is less than what is otherwise called for under the County standards. The second finding is based on probable long term uses of the project and that there are not additional parking demands necessary. He explained that the data generated supports those findings, noting the study shows there is ample parking should the center be at 100% capacity.

Commissioner Ernst asked Mr. Carey about the charts submitted by Crane Transportation and requested clarification of the chart specific to Friday night. He also inquired about two vacancies at Rose Center, at which time Carolyn Cole of Crane Transportation provided the Commission with the addresses of the vacant units. Commissioner Ernst noted that in his personal observations, there is ample parking at the center. To confirm, Commissioner Ernst asked Ms. Cole that even if the vacant units were occupied, there would still be sufficient parking. Ms. Cole stated that it was her opinion that the shopping center is performing under the city code requirements for the parking uses based on her study. She added that even if the two vacant spaces were filled, there would still be 30% availability.

Mr. Carey spoke about the letter he submitted to the Commission. He made a suggestion for Finding No.5, which would be to make reference in the finding to Crane Transportation Group's paragraph IV of the study.

William Keegan, owner of Heart and Soul Tax Services and occupant of Rose Center - He explained that his business is situated in the middle of the long portion of the development and he is going into his third season as a tenant. He stated that he has not

experienced any parking issues. He added that his business has experienced 158% growth in the last year, noting the busiest time for his office is Saturday and Monday evenings. During that time, there has been ample parking according to Mr. Keegan. He also explained that the third year of business was when he experienced the largest percentage of growth.

Bonnie Silveria, Benicia resident - She stated some points for the Commission to consider. She spoke about former Mayor Ernie Ciarocchi, in which he would say that the best thing that could happen to Benicia is to have a parking problem. She added that the last planning institute that she attended in Monterey talked about parking issues. She indicated that parking ordinances across the country are being thrown out because we want to look into the future and want people to use public transportation. She feels that will not happen as long as we develop a place with a million parking spaces for people to drive their cars to. She indicated that we need help in this community and it is not the time to demand more of the people that have invested in our community. She reaffirmed the need look into the future and get people out of their cars to use public transportation.

William Kopper, Attorney, 417 E Street in Davis, CA – As a representative for Mary Wika, he indicated that the City of Benicia has been reversed by the courts twice related to the Rose Center Project. His opinion is that this is because the City did not follow the law. He further stated that the Commission cannot rely on Staff because they are giving information that is only going to lead to another suit where the City is going to be reversed. He indicated that he called City Attorney McLaughlin and said that this case should be delayed because it was not final from the trial court or court of appeals yet, and he also did not have sufficient time. He feels that the troubles of this case are because it is being driven entirely by the developer's legal staff. Mr. Kopper noted that in most CEQA cases, the City has an attorney represent them in court paid by the developer. Where in this instance, he stated that the developer's attorney is representing both the City and the developer, which is a clear conflict of interest.

Mr. Kopper commented on the question raised by Commissioner Dean regarding CEQA environmental review for the use permit. Referring to his letter, he stated it is true that the 1989 EIR did address the land use for that particular area, but it did not address this particular permit, which is discretionary. He stated that there has to be CEQA environmental review. He also stated that if the Commission goes forward and it is brought back to court, the City would lose on that issue.

Chair Healy indicated the appellate court addressed the CEQA issue, noting finding of the CEQA challenge was untimely. Mr. Kopper disagreed stating that they did not reach the statute of limitations. He further clarified the basis of decision by the appellate court, stating the City violated the law because it did not go back and reanalyze the parking under the requirements of their own code. He added that clearly a Longs Drug would have different parking requirements than a gas station. Mr. Kopper continued that the court did not say that when you process a use permit you're excluded from CEQA review. He believes the City broke the law. He spoke about the former Planning

Director's decision regarding the substitution of the proposed gas station for a Longs Drugs as a discretionary act, therefore there had to be CEQA review.

Chair Healy's recollection of the opinion was the anomaly was that the use permit wasn't necessary for the Longs because that was authorized under the zoning, and the error was on the discretionary question of whether or not the parking was adequate. He indicated the Commission was specifically asked to address that specific question and was not told to redo the CEQA analysis.

Mr. Kopper disagreed, noting the opinion as exhibit A of his letter. He indicated there is a request for the Commission to address the use permit and the parking needs under the ordinance 17.740.040. He added that Staff should hire an attorney to provide neutral advice to the City, so the City Attorney is not relying on the developer's attorney.

Chair Healy questioned Mr. Kopper about the issue of remittitur and time. He continued that there is no appeal of this issue. He stated that in the event the Commission was to continue the issue for a month to allow for a remittitur to be sent back is formal assumption. Mr. Kopper disagreed, noting that the appellate court has the authority to change its opinion until it issues the remittitur. Mr. Kopper posed the question of why this issue is being rushed as he received only two days notice of the review by the Planning Commission. He added that he did not have the opportunity for a traffic engineer to review the study and if continued, he could produce information based on their findings. He added that he was told by Staff that if his letter dated December 9, 2009 was sent, it would probably not reach the Commissioners in time and he was not given the email addresses to forward the letter either. Mr. Kopper urged the Commission to review the entire letter. Additionally, he inquired about the staff report, which did not provide the Commission information on the required number of spaces with the Longs Drug under the existing city code. He argued the ordinance was designed for what can be the maximum use and the parking demand can change dramatically.

Chair Healy noted that even if there were a continuance of the issue, there would not be a change in the use that would allow seeing what would happen under different circumstances. Mr. Kopper responded if the issue were continued, the Commission would have the benefit of ideas of another traffic expert and reasons why this study may not be sufficient.

Chair Healy asked what Mr. Kopper's proposed remedy would be if the center is under parked. Mr. Kopper responded that the first remedy would be the acquisition of an additional parking area from the lot next door. Secondly, Mr. Kopper suggested the developer could put in a structure to add additional parking to the site. Lastly, he proposed the developer could reduce the square footage of the site.

Colette Meunier, former City of Benicia Community Development Director - she stated that she was the Director at the time the Rose Center Project went under review for its initial set of approvals. She stated that when it was approved there was a requirement of three parking spaces per 100 sq. feet for fast food restaurants. The applicant said that was

unreasonable and in looking at the permits that had been issued for similar use in town, she found the requirement had not been applied to other locations around town. She continued that the department worked with the applicant who provided a study prepared by George Nicholson. She found the requirement was not generally applied and was not the parking demand that existed. She stated that there was a recommendation to change the parking requirement to reflect that kind of use and that was the only exception contemplated under the parking study. She stated in 2006, with the changes to the proposed development, a condition of the approval said that if there is any change in the project that would increase parking, it was supposed to come back before the Planning Commission for consideration. She noted that did not happen and that is partly why there has been litigation in this matter. In her opinion, the drug store has a greater parking demand than the gas station. She noted the counts in the Crane Transportation study have been done in a time of an extremely poor economy, with two vacancies in the center, and it is not known how successful the businesses are in the center currently. She suggested that the Commission ask for comparable counts for parking at the Southampton Shopping Center and Solano Square. She added that maybe the two mentioned centers would like to come in and add development based on the significant parking reduction proposed. If approved, she suggested the reduction should also be granted to them.

Brian Harkins, 527 McCall Drive - he suggested a remedy for the issue and the possibility of taking the 20-year present value of the difference between the Longs Drug and what was proposed in 2003, and make a lump sum payment to the City that could be put toward mass transit.

Jon Van Landschoot, Benicia Resident - he suggested the Commission put off a decision as not all of the information has been reviewed. He indicated that he was not aware of the review and did not receive a Planning Commission memo. He stated that if the Commission makes a decision this evening, they would be sending three messages. One to the judge saying, "thanks for the two decisions but we run this town." He indicated that would probably lead to a third court case. He wondered how much citizens are paying for a developer who is trying to cut corners. He commented that the second message to developers is "don't worry about the details." Thirdly, he stated the City is going to send a message to the citizens that developers get a deal and he feels it is dead wrong. He spoke about the recession and unemployment. He also spoke about the staff report that talks about the downtown mixed use and that the Rose Center is not downtown, but is a strip mall along the freeway, where he never sees bikers stop. He hopes there is a delay to get all the facts.

City Attorney McLaughlin spoke to the issues raised by the public. Regarding the cost of a suit, she stated that anyone that applies for a project with the City has to fill out an indemnification form as part of their project application and approval. For this suit, the City has been fully indemnified. The cost of her time monitoring this suit, cost of staff time and providing information is not covered, which is part of doing their jobs. She stated the outside legal fees are paid fully by the developer. She also noted the City has a number of policies related to sustainability in our General Plan and Climate Action Plan

that encourage us to move away from automobile oriented transit for more sustainable type projects. Additionally, she stated that moving away from automobile traffic and going to bikes and public transit means that we do have less of a parking demand. If approved, she suggested that the Commission might want to include the information as part of the findings in the use permit.

In reference to the environmental analysis, City Attorney McLaughlin noted that it not only references the Western Gateway Land Use Plan EIR, but also information cited in the CEQA Guidelines Section 15268 for insubstantial amendments to a project.

Chair Healy posed a question to City Attorney McLaughlin in regards to acting without a remittitur. She stated that in trying to move in a timely fashion, the City could appeal any decision. She feels the issue is of low risk to the City, partly because of indemnification and because the Commission is going to act within its scope of authority.

Chair Healy indicated that he felt the court, in its clear written opinion, very bluntly told the Commission the task to be completed. He added that the Commission is to determine whether or not it was reasonable to make a finding about the number of parking spaces, and either ratify it or modify it. City Attorney McLaughlin agreed.

Commissioner Ernst asked Damon Golubics about Mr. Kopper's submission and his calculation for parking at the Rose Center, using the fifteen spots per 1000 sq. ft. of fast food area versus three spaces per 100 sq. ft. He also asked if the drive-thru areas are taken into consideration. Damon Golubics answered that there are two types of calculations when considering a fast food restaurant with drive-thru and that it was taken into consideration as part of the parking analysis.

Commissioner Ernst inquired if Ms. Wika has a lease in the Rose Center Project. Damon Golubics responded that he was not aware of one.

Commissioner Dean indicated that after reviewing the traffic study, he is of the opinion that there is an ample amount of parking in the center for the existing uses and given the fact that we are in a downturn. He also noted the last paragraph of the staff report for generally downsizing parking in interest of making better use of the space and making alternate forms of transportation. Commissioner Dean remarked that procedurally, the Commission is missing a step because it is basing the use permit on an environmental document that was done almost 20 years ago with no update. He added that typically there is an addendum or something to make the link showing review with no environmental impacts, allowing the advancement of a use permit. Commissioner Dean was troubled that a link is missing and is nervous about moving forward.

Chair Healy noted that the environmental issue was raised in the lawsuit, and the court ruled it was untimely, and asked for clarification. City Attorney McLaughlin indicated that the court did not get to the details of the Western Gateway EIR and it was sufficient for what was being reviewed. She also referred to the previously mentioned CEQA

section regarding insubstantial amendments to a project as a way to bulk up reliance on the EIR.

Mr. Kopper stood and spoke from his seat and was told by Chair Healy that he was out of order.

Commissioner Thomas indicated that he feels comfortable with the adequacy of the parking. He remarked that he was not personally troubled by the CEQA issue and agrees with Council's suggestion. However, he noted that a delay would not trouble him either, if that eliminates all risk of a challenge.

In regards to the initial approval of the parking, Commissioner Ernst asked if the Community Development Department made the determination of what the parking should be and whether or not they approved something that was less than what should have been.

Commissioner Ernst mentioned ongoing changes to the use of the center, and inquired as to whether the court order allows time to wait and finalize a decision. City Attorney McLaughlin cited Condition No. 5 that staff proposed and also the proposed modified condition from the applicant stating that if there is a change in the use, then parking can be re-evaluated. Damon Golubics added that in 2006 when the Director looked at the new site plan, there was a two-space surplus from the old plan to the new plan. That is what he based his decision on moving forward.

Commissioner Thomas asked if the necessary notice requirements were followed. Damon Golubics answered that the requirements were handled correctly.

Chair Healy added and asked that the record should reflect that the Commission is not questioning the court order. The Commission is following the directive of the Court of Appeals.

Thomas Carey reiterated Chair Healy's point that the Commission is acting on a specific directive from the court of appeals to get the permit for reduced parking within 120 days of the order being sent down, noting that is the 40th day of that period. He also indicated that he felt an appeal was inevitable. Mr. Carey strongly urged the Commission, with the evidence provided, to come to a decision so as to comply with the courts wishes.

Mr. Kopper indicated that the 120 days does not start until the pre-emptory writ of mandate is issued by a trial court. He cited that no time has run down because the decision is not final. He announced that he thought he heard City Attorney McLaughlin advise the Commission that in the opinion that was issued by the court of appeal, the court of appeal had said that the 1988-89 EIR actually covered this particular parking thing. He continued that if she did, she herself would have something to worry about.

Chair Healy asked Mr. Kopper if the Commission is free to revisit this regardless of the court. Mr. Kopper explained that the only reason the Commission is reviewing this issue

is because of the court decision. He added that the court decision is not final and it is premature to do this. Mr. Kopper stated that there has to be an environmental review. He believes the reason the City has lost twice in court on this one case is because it is getting bad advice from Staff. He also stated that it is not true that the City is fully indemnified, because the staff has put in a lot of time putting together the records for dealing with this suit, probably two weeks to a month that the citizens had to pay for. He continued there is some duty as Commissioners to get this right.

Chair Healy indicated that this is not a new issue to Mr. Kopper in relation to the number of parking spaces, and that he has been well aware of all of the issues the Commission is being asked to address. He added that Mr. Kopper fully litigated this issue with such skill that the appellate court sent us back and told the Commission what to do. Chair Healy continued that the idea of being sand bagged really isn't totally right because Mr. Kopper has been litigating this for a couple of years. Mr. Kopper responded that the developer persuaded City staff to bring this up for review prematurely, that he only had two days notice, and did not have time for an expert to review the traffic study. Mr. Kopper assured the Commission that if they go forward without environmental review, the City is going to lose in court again and it will cost the City money because staff will have to be involved.

Commissioner Ernst asked the City Attorney her opinion as to whether to move forward with the issue tonight or put it off for 30 to 60 days and acquire more information. City Attorney McLaughlin stated that she could not see what would be gained by putting it off for 30 to 60 days. She added that she feels quite confident that whether the Commission takes action now or two months from now, Ms. Wika will still want to bring a lawsuit. She suggested to amend the resolution by adding the environmental analysis that would reflect that the City is relying on the Western Gateway analysis and refer back to public resources code 21166 that states once an EIR is conducted, no subsequent or supplemental EIRs are required unless you have new information or there are substantial changes to the project or circumstances surrounding it. She added that the reduction in parking is not a substantial change. She also suggested to add that it is not a substantial amendment to the project and therefore is exempt under CEQA guidelines 15268. She would also add a reference to the General Plan and Climate Action Plan on the trend for sustainability and reducing automobile traffic.

Commissioner Ernst asked the City Attorney's opinion on the proposed modification to Condition No. 5 of the resolution. City Attorney McLaughlin stated that Staff is fine with that change.

Chair Healy asked about the addition in the resolution of a safeguard should changes to use occur, allowing for staff review. He inquired should it also receive Planning Commission review as well. City Attorney McLaughlin explained to the Commission that it would be worth noting.

RESOLUTION NO. 09-4 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR

**PARKING REDUCTION AT ROSE CENTER LOCATED AT 2100–2158
COLUMBUS PARKWAY (09PLN-95)**

On motion of Commissioner Ernst, seconded by Commissioner Bortolazzo, the above Resolution was approved with noted additions by the City Attorney and proposed modification to Finding No. 5 by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 10th day of December 2009, and adopted by the following vote:

Ayes:	Commissioners Bortolazzo, Ernst, Syracuse, Thomas, and Chair Healy
Noes:	Commissioner Dean
Absent:	None
Abstain:	Commissioner Sherry

Chair Healy called for a short break at 8:40 pm. The meeting was called back to session at 9:04 pm.

VI. COMMUNICATIONS FROM STAFF

A. GENERAL PLAN IMPLEMENTATION – Commission Discussion

Planner Golubics gave a brief progress report and discussed with the Commission annual progress made towards implementation of the City’s 1999 General Plan. He noted little or no change to the General Plan directives and hoped that everyone responsible for the General Plan programs will find the resources during these challenging times to carry out the important directives of the General Plan. He added that implementation programs from the Fire Department had been updated after the staff report was published.

Chair Healy opened the meeting up for public comment on the General Plan Implementation.

Bonnie Silveria, Benicia resident – she spoke about the Code Enforcement Officer and his response on a complaint only basis. She suggested the Commission create an ordinance with teeth in it that the officer could use. She noted concerns with some properties on Military East that need to be addressed, but because there are no complaints lodged by the neighbors, nothing is done about them. She hopes the Commission makes the creation of a new ordinance addressing this issue a priority because it is something that is needed.

Commissioner Ernst asked when the Commission goals are reviewed. Damon Golubics explained that goals for the General Plan are reviewed through the strategic planning process, which is a two-year cycle. He added that the Commission can agendize and bring a work program or goals to Staff for action. Commissioner Ernst asked that the code enforcement issue be agendized. Damon Golubics suggested a future meeting and study session and review for Commissioners to bring a tougher ordinance forward.

Damon Golubics pointed out the Climate Action Plan created by Associate Planner and Sustainability Coordinator Mike Marcus with individuals from Cal Poly. He added that it

is an outstanding document that will have a lot of longevity to it. He also commended the Commission for all of their great work over the past year, noting that it has been a very productive year and that the Commission has done a lot of great work.

VII. COMMUNICATIONS FROM COMMISSIONERS

Commissioner Ernst inquired about the change of duties of Gina Eleccion. Damon Golubics stated that her role keeps expanding and evolving. She is working on the Intermodal project. He added that she kicked off the Historic Context Committee working with consultants for all of the historic districts in town. He explained to the Commission that Raquel Walsh, with the help of Rhonda Corey, is learning to do the minutes for future meetings.

Commissioner Sherry inquired about the lawsuit with adult entertainment business and asked for an update. Damon Golubics indicated that it was a multi-pronged lawsuit and part of it dealing with the local real estate agency was settled. He noted that he has gone through a deposition. He added that part of the suit has been dismissed and he believes that the suit against the City is still active. He has been asked to retain all information related to this issue and is currently retaining 8,000 emails. It has not been settled and he has not received anything from the individual applying for a site at the industrial park

Commissioner Dean asked about the Intermodal project and the canceled meetings. He wondered if the project was moving forward. Damon Golubics answered that the project is moving forward at a slow pace. He noted that a church at Southampton and Military West pulled out of the project, so the Planning Division is currently looking for an alternative site. He will provide an updated at the next meeting.

VIII. ADJOURNMENT

Chair Healy adjourned the meeting at 9:17 pm.



Public Works & Community Development Department
MEMORANDUM

Date: February 4, 2010
To: Planning Commission
From: Gina Eleccion, Management Analyst
Subject: Update on Intermodal Facilities Project

At the August 27, 2009 joint Planning/Historic Preservation Review Commission meeting, staff provided preliminary information on the Benicia Intermodal Facilities Project. At the December 10, 2009 Planning Commission meeting, Commissioner Dean requested an update on the project.

The project includes sites at Military West/Southampton and Military/First to serve Baylink Route 78, providing service between the Vallejo Ferry Terminal and Walnut Creek BART. The \$3 million in bridge tolls that funds the project is contingent on demonstrable progress toward construction of facilities in these two locations (as approved by City Council Resolution 08-132) and administered by the Solano Transportation Authority and the Metropolitan Transportation Commission).

Public workshops were scheduled for late 2009 to solicit input on the design and functionality of the facilities. However, the workshops were postponed until the site at Military West/Southampton could be confirmed, and to provide additional time to investigate design alternatives at City Park (based on public comment).

In the meantime, City staff has researched alternate sites, including: Solano Square (directly behind Westamerica Bank) for the City Park site; and West N Street (between 12th and 13th), Military West (between West 10th and 11th) and the State Park parking lot for the Military West/Southampton (Gateway Calvary Church) site. The owner of Solano Square has expressed no interest in participating. The Military West sites present multiple issues, including but not limited to location, circulation, visibility, accessibility and neighbor opposition. City staff is continuing discussions with the Calvary Church.

The public workshops will be rescheduled as soon as possible to allow the project to proceed and ensure that funding for design and construction remains available.



Public Works &
Community Development Department
MEMORANDUM

Date: February 4, 2010
To: Planning Commission
From: Lisa Porras
Senior Planner
Re: Commission Discussion Item – Priority Number 4

During the Commission's February 11 hearing, Regular Agenda Item "A" will focus on the topic of "gateways". Staff will make a PowerPoint presentation to provide an overview of existing goals, policies, and programs pertaining to gateways as described in Benicia's General Plan. In addition, staff will update the Commission about current efforts underway that relate to gateways and share local examples found here in Benicia.

The General Plan identifies five gateways in the City:

- (1) Northern Gateway at I-680 and Lake Herman Road
- (2) Lake Herman Gateway along Lake Herman Road, just east of Lake Herman
- (3) Southern Gateway at the intersection of I-680 and I-780
- (4) Western Gateway at I-780 and Rose Drive/Columbus Parkway
- (5) Marina and the Port as approached from the Carquinez Strait.

In addition, the General Plan also identifies the Pine Lake Area as a gateway.

In an effort to save paper and not recopy portions of the General Plan, staff points the Commission to pages of the General Plan that cover all of the gateways identified above:

Page 16-17, Gateways
Page 18, Figure 1-3 Gateways
Page 47, Policy 2.11.3, and Program 2.11.A (Pine Lake)
Pages 111-114, Scenic Views, Streets, and Gateways
Page 118, Program 3.7.B.
Page 120, Policy 3.9.4 and Program 3.9.E
Page 193, Gateway definition

(over)

As a suggestion, and to help frame the discussion, staff asks the Commission to consider the following:

- What would implementation of the 5 gateways look like?
- Should gateways be designed to look consistent? Or should each gateway be approached as a unique feature drawing from its surroundings and local context?
- Should the 5 gateways be prioritized for implementation?
- Are there other gateways that are not listed in the General Plan, but are important to consider?
- Are the policies and programs in the General Plan complete? Or are there other key components that should be identified?

This item will be continued to March to follow up on Commission direction received on February 11, 2010.