

**BENICIA CITY COUNCIL
SPECIAL MEETING AGENDA**

**Commanding Officer's Quarters
1 Commandant's Lane
February 11, 2012
9:00 AM**

*Times set forth for the agenda items are estimates.
Items may be heard before or after the times designated.*

I. CALL TO ORDER (9:00 AM):

II. CONVENE OPEN SESSION:

A. ROLL CALL.

B. PLEDGE OF ALLEGIANCE.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE 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.

III. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council 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 COMMENT.

B. PUBLIC COMMENT.

IV. PUBLIC STUDY SESSION:

A. COMPLETION OF OPEN GOVERNMENT AWARENESS TRAINING AND ANNUAL REVIEW OF THE CODE OF CONDUCT AND RULES OF PROCEDURE. (City Attorney)

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, Conflict of Interest laws, the Open Government Ordinance, City Council Rules of Procedure and the City of Benicia Code of Conduct for Members of City Council, Boards, Commissions and Committees and other related documents.

Recommendation: Complete the open government awareness training and review the code of conduct and rules of procedure. Direct staff to amend either the Open Government Ordinance or the Council Rules to eliminate the inconsistency regarding speaker time and granting time to others.

B. REVIEW OF 2011-13 STRATEGIC PLAN AND IDENTIFICATION OF A WORK PROGRAM. (City Manager)

The City Manager will present an update to the Council regarding the 2011-13 Strategic Plan and the City Council will review priorities for the next 12 month period.

Recommendation: Receive presentation and provide direction to staff.

V. ADJOURNMENT (4:00 PM):

Public Participation

The Benicia City Council 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 City Council allows speakers to speak on non-agendized matters under public comment, 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 City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access or Special Needs

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, if you need special assistance to participate in this meeting, please contact Anne Cardwell, 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 the meeting.

Meeting Procedures

All items listed on this agenda are for Council 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 City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council 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 City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library 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 City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerks Office.

**AGENDA ITEM
CITY COUNCIL MEETING DATE - FEBRUARY 11, 2012
BUSINESS ITEMS**

DATE : January 30, 2011

TO : City Council

FROM : City Attorney

SUBJECT : **COMPLETION OF OPEN GOVERNMENT AWARENESS TRAINING AND ANNUAL REVIEW OF THE CODE OF CONDUCT AND RULES OF PROCEDURE**

RECOMMENDATION:

Complete the open government awareness training and review the code of conduct and rules of procedure. Direct staff to amend either the Open Government Ordinance or the Council Rules to eliminate the inconsistency regarding speaker time and granting time to others.

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, Conflict of Interest laws, the Open Government Ordinance, City Council Rules of Procedure and the City of Benicia Code of Conduct for Members of City Council, Boards, Commissions and Committees and other related documents.

BUDGET INFORMATION:

There is no fiscal impact.

GENERAL PLAN:

N/A

STRATEGIC PLAN:

N/A

BACKGROUND:

Annual Training:

The training includes a review of the Brown Act, conflict of interest issues, ethics, due process and open government tips for effective meetings. We will review key points during the training. 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.

Brown Act Update: Several changes effective January 1, 2012 were made to the Brown Act. First, compensation and stipends are limited for simultaneous or nearly simultaneous meetings. See new Government Code Section 54952.3. This is to protect against some of the abuses from other cities where council members would get meeting stipends for attending meetings of other agencies that are made up of the city council. Some cities had a practice of agendaizing meetings even when there was not real business so the members could receive compensation. Second, meeting notices are required to be posted on the City's website for the City Council and boards and commissions if both the members receive compensation and the members include at least one member of the City Council. See amended Government Code Section 54954.2. We already post the Council agendas and your board and commission agendas on our website. We typically use the meeting agenda as the notice. Third, some technical amendments were made to Government Code Section 54954.6. Fourth, compensation changes for the City Manager, City Attorney and Department Heads may only happen at a regular meeting as opposed to a special meeting.

Some of the key Brown Act points we will cover in the training include:

- Definition of a meeting
- Quorum
- Serial meetings
- Technology

Potential Ordinance Changes: Over the past year a couple of issues have been raised that require consideration.

There are a couple of possible inconsistencies between the Open Government Ordinance and the Council's Rules of Procedure involving the time for public speakers. Subsection 4.08.090 of the Open Government Ordinance provides that public speakers are allowed up to five minutes of time.¹

The first issue is whether "up to five minutes" means the Council may shorten the time. The Council's Rules of Procedure allow for the Council to authorize a

¹ "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."

shorter amount of time. See Section III.E.3 of the Rules. In order to eliminate the possibility of confusion, the Open Government Ordinance should be amended to include language to authorize the shortening of time similar to the Rules. In any case, the Council may want to clarify that, if possible, the change of the amount of time for speaking should be done at the start of the meeting or at the start of the agenda item rather than in the middle of the agenda item.

The next issue involves additional time for speaking. The Open Government Ordinance does not specifically address allowing speakers additional time. The Rules of Procedure allow the presiding officer to grant additional time with the consent of a majority of the Council. If the suggested change regarding shortening time is made to the Open Government Ordinance, this clarification should be made as well to prevent controversy in the future.

Another issue that has been raised is whether potential speakers are allowed to give their time to another speaker. The Rules specifically prohibit this but the Open Government Ordinance is silent on the issue. Since the Ordinance does allow the adoption of rules of procedure, a change to the ordinance is not really needed unless the Council desires to change the prohibition or would like it to apply to all of the City's boards and commissions as well. Factors to consider are that it is common to have such a prohibition in the rules for councils and other bodies in order to allow the body to hear from the most people. It also may save time if only one speaker has to go to the microphone.

Other Issues: Other issues that have come up in the past year include questions about anonymous speakers, criticism or attacks, and civility at meetings. Regarding anonymous speakers, the Open Government Ordinance specifically allows anonymous speakers. See Section 4.08.090 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." The Brown Act is not as specific but it does prohibit requiring people to register with their name in order to attend the meeting. See Section 54953.3.² You may recall the City amended the speakers cards several years back to make it clearer that one did not need to provide their name and address in

² **§ 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.

order to speak. From these rules, it is logical to allow another person to read an anonymous letter into the record. If a person wanted to remain anonymous it would be next to impossible if the person had to show up in person to read the letter. Of course, the Council may give less weight or credence to a letter or speaker who wishes to remain anonymous. Similarly, the Council may give more weight to neighbors directly impacted by a project as opposed to people far away from a project. The weight the Council gives a speaker or to a letter writer is typically up to the individual council member.

Regarding criticism or attacks by speakers, both the Brown Act³ and the Open Government Ordinance specifically state that criticism cannot be prohibited. See Subsection 4.08.090 G of the Open Government Ordinance: "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."

In recognition that city council meetings are limited public forums designed to allow the legislative body to conduct business, the Courts have interpreted the Brown Act so that city councils may adopt reasonable regulations regarding decorum. In the case of *White v. City of Norwalk (California)* the Ninth Circuit found that the city did not violate a speaker's civil rights by enforcing its rule that stated: "Each person who addresses the Council shall not make personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public. Any person who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting shall, at the discretion of the presiding officer or a majority of the Council, be barred from further audience before the Council during that meeting...."⁴ The Council may want to consider adding to the Rules a warning before ejecting people. The Council's practice has been to warn people before ejecting them.

³ Government Code Section 54953.3(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."

⁴ *White v. City of Norwalk*, 900 F.2d 1421 (9th Cir. 1990). See also *Norse v. City of Santa Cruz*, 629 F.3d 966 (9th Cir. 2010). This case regarding a silent Nazi salute at a city council meeting was sent back to the trial court in part since the gesture made after public comment had some First Amendment protection and it was unclear if he were ejected for disruptiveness or the gesture.

Finally, I have included two articles from the Institute for Local Government about promoting civility in public meetings. The Institute for Local Government (“ILG”) is the research and education affiliate of the California State Association of Counties and the League of California Cities.

Attachments:

- ❑ The 2012 Brown Act
- ❑ Title 4 of the Benicia Municipal Code (Open Government Ordinance)
- ❑ City Council Rules of Procedure
- ❑ Code of Conduct
- ❑ Participating in City Council Meetings
- ❑ Open Government Tips
- ❑ Whistleblower Policy
- ❑ Can I Vote?
- ❑ Resources for Leaders in Difficult Times
- ❑ Tips for Promoting Civility in Public Meetings



Proposition 59

California Constitution, Article I § 3

2012 Brown Act

California Government Code

City Attorney's Office 2012

In the interest of saving paper, we have printed this update in booklet format. If you would like a larger print (i.e. one page per sheet), please let us know and we will prepare one for you. We can be reached at 746-4216.



City Attorney's Office MEMORANDUM

Date: January 10, 2012

To: City Council

Arts and Culture Commission

Civil Service Commission

Community Sustainability Commission

Economic Development Board

Finance Committee

Historic Preservation Review Commission

Human Services Board

Library Board of Trustees

Open Government Commission

Parks, Recreation & Cemetery Commission

Planning Commission

Sky Valley Open Space Committee

Traffic, Pedestrian and Bicycle Safety Committee

From: Heather C. Mc Laughlin, City Attorney

Re: Update Brown Act- 2012

Attached is a copy of the 2012 Brown Act update. There were three substantive changes and one minor change to the Brown Act this year. First, compensation and stipends are limited for simultaneous or nearly simultaneous meetings. See new Government Code Section 54952.3. This is to protect against some of the abuses from other cities where council members would get meeting stipends for attending meetings of other agencies that are made up of the city council. Some cities had a practice of agendizing meetings even when there was not real business so the members could receive compensation. Second, meeting notices are required to be posted on the City's website for the City Council and boards and commissions if both the members receive compensation and the members include at least one member of the City Council. See amended Government Code Section 54954.2. We already post the Council agendas and your board and commission agendas on our website. We typically use the meeting agenda as the notice. Third, some technical amendments were made to Government Code Section 54954.6. Fourth, compensation changes for the City Manager, City Attorney and Department Heads may only happen at a regular meeting.

Here are a few reminders for you.

1. For the purposes of the Brown Act, know what is the quorum for your group. Quorum is the number of members needed to conduct business. Typically, it is a majority of the body. If there is an even number of members, quorum is 50% of the membership plus one. For the Council, three members constitute the quorum. Please note that a vacancy or absence does not change a body's quorum.
2. Use caution using email or other technology or people to "talk" about a matter. The Brown Act prohibits a majority of a body from using "a series of communications" either directly or through intermediaries to hear, discuss or deliberate on a matter. Questions to and from staff and members of a body are still allowed outside of a meeting so long as no one communicates the position or comments of a member to other members.

3. Use caution if you have a blog or an email newsletter. Not only can your comments show up in the newspaper or in litigation, they can also be used to claim a violation of the Brown Act if you are transmitting your positions and comments to other members of your body or to a third person who communicates the comments to members of your body. Remember, your decision-making should happen at a meeting in compliance with the Brown Act.
4. Finally, remember the perception on a Brown Act violation can do as much harm to public confidence in the process as an actual violation. While it may be permissible for you to do certain things under the Brown Act, please consider how the public will view your action.

Please let me know if you have any questions. Again, in the interest of saving paper, we have copied the update in a booklet format. If you would like a larger print (i.e. one page per sheet), please let my assistant Kathi Molinar know and she will prepare one for you. She can be reached at 746-4216.



cc: City Manager
Department Heads

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. Simultaneous or serial order meetings of a subsequent legislative body; compensation and stipends

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

§ 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. Agenda; posting; action on other matters; posting on Internet Web site

(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 and on the local agency's Internet Web site, if the local agency has one. 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.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

§ 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. New or increased taxes or assessments; public meetings and public hearings; joint notice requirements

(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 telephone 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 or businesses 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 or business 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, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, 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) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. 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 telephone 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 XIII C or XIII D 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; call; notice; meetings regarding local agency executive salaries, salary schedules, or compensation in form of fringe benefits; posting on Internet Web site

(a) 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 and posting a notice on the local agency's Internet Web site, if the local agency has one. 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.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

§ 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.

CITY OF BENICIA

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 delete 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 automatically continue the item to the next regular meeting or a special meeting or decide that there was adequate notice to allow consideration of the additional information. "Substantial supplemental information" is written information that (a) could not be said or read within the oral public comment period, (b) is, according to a majority vote of the body, too technical or detailed to be readily understood, and (c) 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; and

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 agenda meeting. If such discussions take place, officials must publicly disclose at the start of the agenda 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.

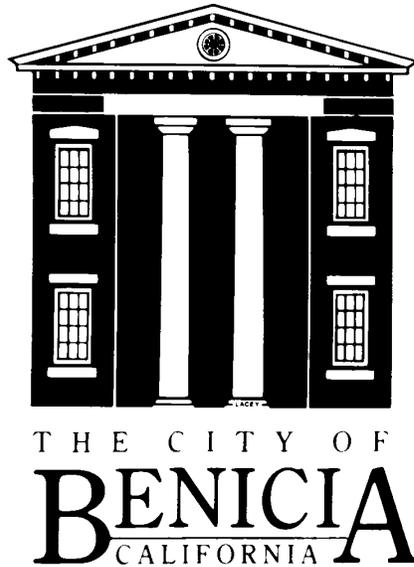
C. The city clerk in the case of the city council and the assigned department in the case of other bodies shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it.

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).

City Council Rules of Procedure



Created April 21, 2011

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INTRODUCTION.

These rules are assembled to make it easier for people to access city government so that they may be more informed about what the City is doing and so that they may be involved in a more meaningful and knowledgeable way. Open meetings and ethical guidelines 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.

I. MEETINGS.

A. REGULAR MEETINGS.

The City Council holds regular meetings for the conduct of the City's business on the first and third Tuesday of each month unless the meeting is cancelled. Regular meetings of the City Council are held in the City Council Chambers at City Hall unless the City Council Chambers are unavailable or inappropriate for the items proposed for the Council's agenda. The City Manager, in consultation with the Mayor, shall determine an alternative location if necessary.

B. SPECIAL MEETINGS.

The City Council holds special meetings as necessary. Special meetings are used for Closed Session items and for other items of business that require scheduling at a special meeting due to the need to take action prior to a regular meeting or that require a meeting devoted to the subject matter proposed for the meeting.

C. STUDY SESSIONS.

The purpose of a study session is to meet with staff and various people, Boards, Commissions and Committees to receive briefings and background information and discuss policy issues and provide staff direction. A study session allows a range of meeting formats depending on the topic and allows for general discussion of major or controversial items before formal City Council action is required. The fourth Tuesday of the month is reserved for study sessions. Additional dates for study sessions may be scheduled as necessary. Study sessions may be scheduled as regular, adjourned regular or special meetings. Presentations to the City Council will be made by staff members, consultants, representatives of the City's Boards, Commissions and Committees or of other public agencies, and/or by any other person expressly invited for that purpose. Public comment on the item under consideration is allowed. No motions will be offered and no formal action by the City Council will be taken at the study session. The study session allows the Council Members to ask questions and express personal opinions about the item under consideration.

D. CONDUCT AT MEETINGS.

In addition to complying with the Code of Conduct, City Council members shall refrain from electronic communications during a meeting in order to avoid potential Brown Act or due process issues.

E. ADJOURNMENT.

It is the desire of the City Council to adjourn their meetings by 11 p.m. Therefore, no new business will be taken up by the Council after 11 p.m. unless the City Council adopts a motion to continue. The remaining items will be placed on the next regular Council meeting in the appropriate section of the agenda, unless the City Council calls for a special meeting to consider one or more of the continued items. The Council shall review the agenda at approximately 9 p.m. to see if it is likely the agenda items will be completed by 11 p.m. or if items will probably be continued to the next regular meeting. If it appears items will be continued, the Council will let the audience know as soon as is practical. The Open Government Ordinance requirement for public comment on the item will occur when the item is scheduled unless a majority agrees to move it up.

II. AGENDAS.

A. PREPARATION.

The Mayor and the City Manager shall prepare an agenda for each meeting of the Council. Items to be included on the agenda must be submitted to the City Manager in writing by noon on the 79th working day preceding the regular meeting and on the 5th working day preceding a special meeting.

B. TWO-STEP PROCESS.

City Council Members may request that a policy matter be considered by the City Council using the Two-Step Process. A Council Member submits the Council Member Requested Agenda Item form ([Appendix A](#)) to the City Manager. The Council Member shall fill out the form as completely as possible and indicate a desired date for agendaization of Step 1 and for Step 2. Once Step 1 is agendaized, the City Council shall vote whether or not to pursue study or action on the policy matter. If there is interest by a majority of the City Council, the policy proposal shall be directed to the Policy Calendar Process for scheduling a study session (see Section II.E below) or to an upcoming agenda for action if the subject of the request is time sensitive (Step 2). The Council Member submitting the request shall inform the Council if the item is time-sensitive.

C. LEGISLATIVE SUPPORT OR OPPOSITION.

The City Manager, or City Attorney in the case of legal issues, is authorized to provide support or opposition on legislative matters provided that the support or opposition is

consistent with the position taken by the League of California Cities and/or the Solano City/County Coordinating Council (4 C's). Typically, copies of this correspondence will be sent to Council via email in advance of distribution. Should a Council Member have a question or concern, that member will then have the opportunity to contact the City Manager prior to distribution. Occasionally same-day requests from the League of California Cities for letters, emails or faxes expressing support or opposition are received, and in these instances, advance distribution to Council would not be feasible.

In those cases where no position has been taken by either the League or 4 C's, then the request shall be agendaized for Council review and direction. If timing is such that the request cannot be agendaized prior to the specified response date, then the draft response will be emailed to the City Council in advance of distribution. Should a Council member have a question or concern with the proposed response, that member may then contact the City Manager or City Attorney for clarification and/or to request that the item be agendaized for discussion. All letters authorized by the Council shall be signed by the Mayor.

D. REVIEW OF POLICY ITEM CONSIDERED IN PREVIOUS YEAR.

City Council Members may request that the full City Council review a policy matter that has been decided in the last year by following the procedures set forth in Section II.B. A brief write-up of the matter and the date of last action must be included on the Council Member Requested Agenda Item form ([Appendix A](#)). The request for review will be placed in the appropriate section of the agenda.

E. POLICY CALENDAR PROCESS.

Council Members may request that a policy item be placed on a list of policy issues to be considered at a Quarterly Policy Issues Study Session Meeting. At this quarterly meeting, proposals are selected by majority vote of the Council for placement on the Policy Calendar.

At the quarterly meeting, the Council shall consider the following when deciding which policy proposals shall be calendared for Council consideration:

1. Time required for understanding by Council Members,
2. Time required for sufficient deliberation,
3. Time required for analysis and preparation of staff reports,
4. Time required for public understanding,
5. Council interest in subject,
6. Public interest in subject,
7. Conservation of staff time, and
8. Relationship to Council Priorities.

F. PLACEMENT OF AGENDA ITEMS.

The Mayor and City Manager shall consider whether an item is time-sensitive, likely to generate a large number of public speakers, or is controversial when determining the order of the agenda items. These items will be placed earlier on the agenda in the appropriate section of the agenda. Items that have been continued from a prior meeting or items for reconsideration shall also be placed as early as possible on the agenda in the appropriate section of the agenda.

G. AGENDA PACKETS.

The City Manager shall prepare and provide to each Council Member and the City Attorney, an agenda packet not later than the Thursday preceding each regular meeting or two working days preceding each special meeting. The City Manager shall mail a copy of the agenda or a copy of all the documents constituting the agenda packet to every person who has requested the same in writing during the preceding year, has provided stamped self-addressed envelopes and has paid the applicable fee, if the request is to receive the packet by mail. A paper copy of the agenda packet will be available for those persons so requesting at the time the agenda is posted or upon distribution to all, or a majority of, the Council Members upon payment of the applicable fee. To the extent feasible, the agenda packet shall be available on-line.

H. REGULAR AGENDA.

The regular meeting agenda shall consist of the following sections in order:

1. CALL TO ORDER.

2. CONVENE OPEN SESSION.

- Roll Call
- Pledge of Allegiance
- Reference to the Fundamental Rights of the Public

3. ANNOUNCEMENTS, APPOINTMENTS, PROCLAMATIONS/ PRESENTATIONS. This section includes announcements by the Mayor or Council members, appointments to City boards and commissions, and scheduled presentations. Presentations are limited to a maximum of ten minutes to allow the Council to have adequate time to address the agendized items of business. Proclamations are made before presentations for public convenience.

4. ADOPTION OF AGENDA. The Council, by majority vote, shall adopt the agenda as final. Following such adoption, agenda items may not be added, removed or their order changed unless by the unanimous consent of the Council Members present at the time the agenda was adopted as final. All matters shall be considered by the Council in the order listed on the agenda adopted as final, to the extent of time available. Only matters on the agenda as adopted final or modified under

this section may be considered. Agenda items not considered or completed at a meeting for lack of time become agenda items at the following meeting per Section II.F.

5. OPPORTUNITY FOR PUBLIC COMMENT.

a. Written: All written communications suitable for the agenda, received since the preparation of the subject agenda, addressed to or intended for the City Council and not otherwise included in the agenda, shall be listed in this section in the order received.

b. Public Comment: This section of the agenda is for members of the public to make comments to the City Council regarding non-agendized matters of general interest to the citizens of Benicia in accordance with the procedures set forth in Section III below.

6. CONSENT CALENDAR. Items listed under the Consent Calendar 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 a Council Member, staff, or a member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar. Routine agenda items that are under \$50,000 and/or are already included in the budget may be listed under the Consent Calendar.

7. BUSINESS ITEMS. This section of the agenda is for the business items of the City Council including Public Hearings, appeals, and status or informational reports from staff and the Council. Council Member requests for future agenda items under the two-step, legislative or consideration of items heard in the last year will be agendized here.

8. ADJOURNMENT.

I. SPECIAL MEETING AGENDA.

A special meeting agenda shall consist of the following sections in order:

1. CALL TO ORDER.
2. CONVENE OPEN SESSION.
 - Roll Call
 - Pledge of Allegiance
 - Reference to the Fundamental Rights of the Public
3. ADOPTION OF THE AGENDA. (if multiple items are on the agenda)
4. OPPORTUNITY FOR PUBLIC COMMENT.

a. Written: All written communications suitable for the agenda, received since the preparation of the subject agenda, addressed to or intended for the City Council and not otherwise included in the agenda, shall be listed in this section in the order received.

b. Public Comment: This section of the agenda is for members of the public to make comments to the City Council regarding non-agendized matters of general interest to the citizens of Benicia in accordance with the procedures set forth in Section III below.

5. BUSINESS ITEMS. This section of the agenda is for the City Council for the Closed Session, action items or study session matters.

6. CLOSED SESSION.

7. ADJOURNMENT.

III. PUBLIC PARTICIPATION.

A. FUNDAMENTAL RIGHT.

The City Council promulgates these rules in recognition of the public's fundamental right to speak on agenda items for a meaningful amount of time.

B. RECOGNITION.

No person may address the Council without the permission of the Presiding Officer, or a majority of the quorum, or as otherwise required by law. Except as required by law, the Presiding Officer is obligated to recognize members of the Council and staff prior to opening up items for public comment.

C. ADDRESSING THE COUNCIL.

Those persons desiring to speak on an agendized matter or under Opportunity for Public Comment are requested to, but not required to, complete a Speaker's Card and present it to the City Clerk at the beginning of the meeting or upon their arrival in the Council Chambers. The Presiding Officer shall recognize speakers on an agendized matter, including Announcements, Appointments, Presentations, Proclamations, when that item is before the City Council for consideration.

The Presiding Officers shall recognize speakers on matters not on the agenda under the Opportunity for Public Comment portion of the agenda. Persons addressing the Council shall do so only at the speakers' rostrum and should begin, but are not required to do so, by stating their name and address for the records. All remarks shall be addressed to the Council as a body and not to any member thereof, or to staff, or the public.

No person shall be permitted to enter into any discussion without the permission of the Presiding Officer.

D. ACTION ON NON-AGENDIZED ITEMS.

Any item raised by a member of the public which is not agendized, but may require Council action, shall be automatically referred to the City Staff for investigation and disposition, unless the item requires action to be taken by the Council at the meeting during which it was raised and constitutes an emergency or the need to take such action arose after the posting of the agenda within the meaning of Government Code §54954.2(b). In either event the Council is entitled to discuss the matter before making the determination required under said Government Code provision, and if either finding is made, may take action thereon.

E. TIME LIMITS FOR PUBLIC COMMENT.

1. In order to allow the Council to have adequate time to address the agendized items of business, public comment under Opportunity for Public Comment will be limited to not more than five (5) minutes per speaker on non-agendized items. If a large number of the public desire to speak, the Council may agree to limit the time for each speaker to less than 5 minutes to allow the Council to address the agendized items of business.

2. The Presiding Officer may allow up to 10 minutes for a speaker to speak on multiple agenda items under Opportunity for Public Comment.

3. Each speaker shall speak only once on an agenda item and limit his/her remarks to not more than five (5) minutes when speaking at the time of the agendized item unless a shorter time is authorized by Council.

4. In accordance with the Open Government Ordinance and to promote time efficiency, the Presiding Officer may request spokespersons be designated to represent similar views. A designated spokesperson has 15 minutes to speak.

5. The time for speaking may be extended by the Presiding Officer with the consent of a majority of the Council.

6. Each speaker shall avoid repetition of the remarks of prior speakers and, when speaking at the time an agenda item is being considered, shall speak only to the specific agenda item under consideration.

7. Speakers may not concede any part of their allotted time to another speaker.

F. QUESTIONS.

Following each speaker's remarks, each Council Member shall be given the opportunity to comment further and to address questions to the speaker. The speaker may not be permitted or required to answer such questions if a majority of Council Members present other than the questioner object.

G. PRESENTATIONS SUBMITTED IN WRITING.

Persons who anticipate oral presentations exceeding the allowed time are encouraged to submit comments in writing at the earliest possible time, for distribution to the Council and other interested parties. Comments should be submitted at least one day in advance of the scheduled meeting date to insure distribution to the Council prior to the meeting.

H. POWER POINT PRESENTATIONS.

Members of the public may present a Power Point software presentation to the Council utilizing the City's audio/visual equipment, provided that the public make their request to the City Manager's 72 office hours in advance of the meeting in order to coordinate the use of the equipment.

IV. BUSINESS ITEM PROCEDURES.

A. ONE HOUR FOR HEARINGS.

Individual Business Items, including Public Hearing should not exceed one hour in length. To assist with this goal, time limits for public speakers may be limited in accordance with Section III.E.

B. PUBLIC HEARING AND APPEALS PROCEDURES.

The procedures for Public Hearings and appeals are as follows:

1. Presentation by Staff.
2. Presentation by Proponent or Appellant.
3. Presentation by Opponent.
4. Comments from the Public.
5. Rebuttal by the Proponent or Appellant.
6. The Presiding Officer shall recognize supplemental speakers as required by law or deemed appropriate to gather information relevant to the matter before the City Council. Supplemental speakers shall limit their remarks to presenting new information not already covered by other speakers, and must limit their presentation to five (5) minutes or the time established for speakers in accordance with Section III.E, if less.
7. Following the public portion of the hearing, the Presiding Officer shall declare the public portion of the hearing closed and the matter is then before the City Council for the Council portion of the hearing. Each Council Member shall be given an opportunity

to speak to the subject without interruption. When the Council discussion has been concluded, the Council shall make its decision.

8. Spokespersons for the Proponent/Appellant and Opponent shall each have fifteen (15) minutes to present their case. The spokesperson for the Proponent/Appellant shall have five (5) minutes to present any rebuttal. Organized groups may choose a single spokesperson who may speak for the group. Speakers may not concede any part of their allotted time to another speaker.

V. CREATION OF COMMITTEES, BOARDS AND COMMISSIONS.

A. CITIZEN COMMITTEES, BOARDS AND COMMISSIONS.

The Council may create committees, boards, and commissions to assist in the conduct of the operation of the City Government with such duties as the Council may specify, not inconsistent with the City Code. Any committee, board, or commission so created shall cease to exist upon the accomplishment of the special purpose for which it was created, or when abolished by a majority vote of the Council. No committee so appointed shall have powers other than advisory to the Council or to the City Manager, except as otherwise specified by the City Code.

B. MEMBERSHIP SELECTION.

Pursuant to Resolution No. 10-99 and unless otherwise specified by state law or the City Code, appointments shall be made by the following procedure:

1. A two-member subcommittee appointed by the Mayor, which will rotate among council members with one new appointee each year, shall be appointed to interview applicants for all boards, commissions and committees, unless otherwise provided for by statute, ordinance or resolution. One member of the City Council subcommittee shall be appointed in January of each year and one member appointed in July of each year, each for a one year term.

2. Each term of the subcommittee will be filled by Council Members who did not serve on the committee during the prior term unless the Council Member is unable or unwilling to serve on the subcommittee.

3. The subcommittee shall recommend two to three applicants, in ranked order, to the Mayor for each vacancy and the Mayor shall make the appointments from the recommended applicants.

4. If none of the applicants are acceptable to the Mayor, the subcommittee shall recommend two additional applicants until an appointment is made by the Mayor, which shall be subject to final approval by the Council.

5. If, at any point during this process, only one qualified applicant is available, the subcommittee may choose to make a single recommendation.

6. If the subcommittee is unable to recommend applicants due to lack of qualified applicants, then the Mayor may elect to interview the available applicants and/or direct staff to conduct additional outreach efforts to fill the opening.

7. The names of the proposed appointees shall be posted five (5) working days prior to the appointment being made.

8. For appointments to a board or commission where state law provides for appointment by the Council as a whole, any Council member may nominate a person for appointment. The Council shall then vote on the nominee at the following Council meeting.

C. REMOVAL OF MEMBERS OF COMMITTEES, BOARDS AND COMMISSIONS.

The Council may remove any member of any committee, board or commission which it has created by an affirmative vote of at least four (4) members of the Council, if removal is not specified in the City Code.

VI. RULES OF ORDER.

A. QUORUM.

Three Council Members shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings of the Board. If a quorum is not present within one hour after the time noticed for commencement of the meeting and thereafter any Council Member who was present at the end of such hour leaves and does not return, no meeting shall be held on that date notwithstanding the later presence of three (3) or more Council Members.

B. RIGHT TO THE FLOOR.

A Council Member shall not have the right to the floor without being recognized by the Presiding Officer, except upon a point of order. Council Members, including the Mayor, shall avoid interrupting any Member while speaking.

C. ORDINANCES, RESOLUTIONS AND MOTIONS – PRECEDENTS.

When any ordinance, resolution, or motion is properly brought before the Council and seconded by another Council Member, the council may discuss, debate, and offer other motions including a motion to amend or substitute. If a point of order, or a motion to adjourn, to table, to table to a time certain, to close debate, to refer or to amend, is made, no other action shall be considered until that motion or point of order is resolved. Such items shall have precedence in the order stated in the preceding sentence. Points of order shall be ruled upon by the Presiding Officer, provided that such ruling may be

overridden by a majority of the Council. All points of order, or motions to adjourn, to table, to table to a time certain, to close debate, and to refer), except motions to amend, shall be put to a vote without debate and decided by a majority. Any of the foregoing motions shall be in order at anytime the speaker is duly recognized, except when repeated without intervening business or discussion, or if made when the motion to close debate has been adopted or while a vote is being taken:

1. MOTION TO ADJOURN.

A motion to adjourn terminates the meeting.

2. MOTION TO TABLE.

If a motion to table (without time certain) passes, consideration of the matter may be resumed only upon the motion of a member who voted with the majority on the motion to table.

3. MOTION TO CLOSE DEBATE.

When a motion to close debate is duly made and seconded, there shall be no further debate. If the question carries, the Presiding Officer shall put pending amendments to a vote, without debate, in the inverse order of their introduction before putting the main question. If the question is decided negatively, the main question and its amendments remain before the Council.

4. MOTION TO REFER.

A motion to refer the matter sends the matter to a committee or staff for investigating or studying the proposal and reporting back. If the motion to refer fails, the main question and its amendments remain before the Council.

5. MOTION TO AMEND.

A motion to amend modifies or changes the motion that was being considered. If the motion to amend passes then the main motions should be voted on as amended.

6. DIVISION OF THE QUESTION.

If a matter properly put before the Council contains two or more separable propositions, the Presiding Officer may, with the consent of one other Council Member, divide the question into its separable parts for consideration in order.

7. RECONSIDERATION.

Providing that no intervening rights shall be prejudiced, any Council Member who voted with the majority on a question may move the reconsideration of that question at the same meeting in which the original decision was made or at the next following meeting. A motion for reconsideration must be made no later than the Thursday before the agenda packet is published. After a motion for reconsideration has been acted upon, no other similar motion shall be made without unanimous consent.

D. VOTING.

Unless otherwise required by applicable law, three affirmative votes are required to enact an ordinance, to adopt a resolution, or to adopt a motion granting a franchise or authorizing the payment or expenditure of money or incurring of a debt. The majority of a quorum is required to adopt other motions, unless otherwise required by applicable law. A "majority" refers to a majority of the quorum present. All matters shall be adopted by a roll call vote.

VII. STAFF SUPPORT.

Staff support for requests from individual council members shall be limited to 15 minutes of staff time. Research, report writing, compilation of materials, etc. in excess of 15 minutes shall not be undertaken unless approved by a majority of the City Council.

VIII. FAILURE TO OBSERVE RULES OR PROCEDURES.

The failure to observe any of the rules or procedures does not serve as an independent source of challenge to any decision or action of the City Council, nor does it serve as evidence of improper conduct in any challenge to any action by a City Council member or by the Council as a whole.

IX. REVIEW OF THE RULES OF PROCEDURE.

The City Council shall review these Rules of Procedure not less than annually and make any appropriate changes.

APPENDIX A: COUNCIL MEMBER REQUESTED AGENDA ITEM

Requested by: _____

Desired Initial Council Meeting Date: _____

Desired Date for Second Step or Policy Calendar Review: _____

Deadline for Action, if any: _____

Problem/Issue/Idea Name: _____

Description of Problem/Issue/Idea: _____

COUNCIL DIRECTION

- No Further Action
- Schedule for Second Step on _____
- Schedule for Policy Calendar Review on _____
- Refer to: Staff _____
 Commission _____
 Board _____
 Committee _____

Date Due: _____



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

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 typically 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. It is not necessary to state your name and address.
- Speakers must adhere to the time limits, using the time limit lights as indicators of how much time is remaining. Speaker cards are located at the back table by the door. The light will be green when you begin to speak, turn yellow with one minute left, and turn red when your time is up.
- 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 (<http://public.govdelivery.com/accounts/cabenic/subscriber>) 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. This allows more time for the Council to consider your comments and your information may be included in the agenda packet. You can refer to your documents when you speak.
- 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 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 four 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

Tom Campbell, Vice Mayor

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

Mark Hughes, Council Member

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

Alan Schwartzman, Council Member

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

Christina Strawbridge, Council Member

Christina.Strawbridge@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
Arts and Culture Commission	2 nd Thursday**	7:00 pm
Benicia Zoning Administrator Hearing	Meet as necessary	
Board of Library Trustees	2 nd Tuesday	6:30 pm
City Council	1 st & 3 rd Tuesdays	7:00 pm
City Council/School Board Liaison Committee	Quarterly	8:30 am
Civil Service Commission	Quarterly	6:30 pm
Community Sustainability Commission	3 rd Monday**	7:00 pm
Economic Development Board	3 rd Wednesday*	5:30 pm
Finance Committee	4 th Friday	8:00 am
Historic Preservation Review Commission	4 th Thursday	6:30 pm
Housing Authority Board	4 th Wednesday	6:00 pm
Human Services Board	2 nd Monday	7:15 pm
Open Government Commission	Quarterly	5:00 pm
Parks, Recreation & Cemetery Commission	2 nd Wednesday	6:30 pm
Planning Commission	2 nd Thursday	7:00 pm
Sky Valley Open Space Committee	Quarterly	7:00 pm
Traffic, Pedestrian & Bicycle Safety Committee	Quarterly	7:00 pm
Youth Action Coalition	4 th Wednesday	3:30 pm
Youth Commission	1 st & 3 rd Wednesdays	5:30 pm
Youth Master Plan Steering Committee	1 st Wednesday	4:00 pm

** Bi-monthly

* 2nd Wednesday in December

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

Community Center:

370 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.



December 2011



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 agendaized 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 agendaized 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.

RESOLUTION NO. 10-76

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
APPROVING THE BENICIA WHISTLEBLOWER POLICY**

WHEREAS, the City of Benicia strives to conduct all its activities in a responsible, legal, and accountable manner; and

WHEREAS, in furtherance of these goals, the City Council wishes to adopt a policy encouraging all employees of the City of Benicia; and any elected officials, commissioners, citizens, contractors or any others to report activities that may be fraudulent, unethical, dangerous to City employees or the public, or conducted in violation of the law, and to ensure that anyone who reports such activities under this policy will be protected from retaliation.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby adopt the Benicia Whistleblower Policy attached hereto as Exhibit A.

On motion of Council Member **Ioakimedes**, seconded by Council Member **Campbell**, the above Resolution is introduced and passed by the City Council of the City of Benicia at a regular meeting of the Council held on the 15th day of June, 2010 and adopted by the following vote:

Ayes: Council Members Campbell, Ioakimedes, Schwartzman and Mayor Patterson

Noes: None

Absent: Council Member Hughes


Elizabeth Patterson, Mayor

Attest:

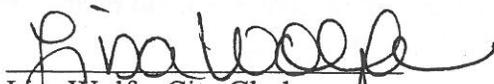

Lisa Wolfe, City Clerk

Exhibit A

WHISTLEBLOWER POLICY

The City of Benicia strives to conduct all its activities in a responsible, legal and accountable manner. In furtherance of this goal, all City of Benicia employees are encouraged to report either orally or in writing to their immediate supervisor, or alternate line of authority as hereafter described, all information of activity by a City of Benicia department or employee that may constitute:

- A violation of federal or state law or city ordinance
- Financial fraud
- Substantial or specific danger to the employee's or public's health and safety
- Unethical business conduct and practices

Any City of Benicia employee who, in good faith, reports such incidents as described above will be protected from threats or retaliation, discharge, or other types of discrimination, including but not limited to, compensation or terms and conditions of employment that are directly related to the disclosure of such reports. In addition, no employee may be adversely affected because the employee refused to carry out a directive, which in fact, constitutes fraud or is a violation of federal or state law.

Insofar as possible, the identity of the whistleblower will remain confidential. However, the City of Benicia reserves the right to disclose the identity of the whistleblower if, in the City of Benicia's absolute discretion, the identity may have to be disclosed to conduct a thorough investigation, to comply with applicable laws and/or to provide accused individuals their legal rights of defense.

Any employee who wants to report information of alleged improper activity or unlawful activity as described above should contact his or her immediate supervisor, or the supervisor's manager. If the employee is uncomfortable for any reason addressing such concerns to their supervisor or the manager of such supervisor, the employee may contact the City Manager, Administrative Services Director or City Attorney. The contact information is provided below. Employees are encouraged to provide as much specific information as possible including names, dates, places, and events that took place, the employee's perception of why the incident(s) may be a violation, and what action the employee recommends be taken. Employees will receive a reply to their report within twenty business days or as soon as practicable thereafter.

Elected officials, commissioners, citizens, contractors or any others are also encouraged to report such alleged improper activity or unlawful activity in accordance with this policy.

Contacts:

City Manager, Administrative Services Director and City Attorney
250 East L Street, Benicia, California 94510
707-746-4200 (City Manager & Administrative Services Director) 707-746-4216 (City Attorney)

The Division of Labor Standards Enforcement believes that the sample posting below meets the requirements of Labor Code Section 1102.8(a). This document must be printed to 8.5 x 11 inch paper with margins no larger than one-half inch in order to conform to the statutory requirement that the lettering be larger than size 14 point type.

WHISTLEBLOWERS ARE PROTECTED

It is the public policy of the State of California to encourage employees to notify an appropriate government or law enforcement agency when they have reason to believe their employer is violating a state or federal statute, or violating or not complying with a state or federal rule or regulation.

Who is protected?

Pursuant to California Labor Code Section 1102.5, employees are the protected class of individuals. "Employee" means any person employed by an employer, private or public, including, but not limited to, individuals employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California. [California Labor Code Section 1106]

What is a whistleblower?

A "whistleblower" is an employee who discloses information to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses:

1. A violation of a state or federal statute,
2. A violation or noncompliance with a state or federal rule or regulation, or
3. With reference to employee safety or health, unsafe working conditions or work practices in the employee's employment or place of employment.

What protections are afforded to whistleblowers?

1. An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from being a whistleblower.
2. An employer may not retaliate against an employee who is a whistleblower.
3. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
4. An employer may not retaliate against an employee for having exercised his or her rights as a whistleblower in any former employment.

Under California Labor Code Section 98.6, if an employer retaliates against a whistleblower, the employer may be required to reinstate the employee's employment and work benefits, pay lost wages, and take other steps necessary to comply with the law.

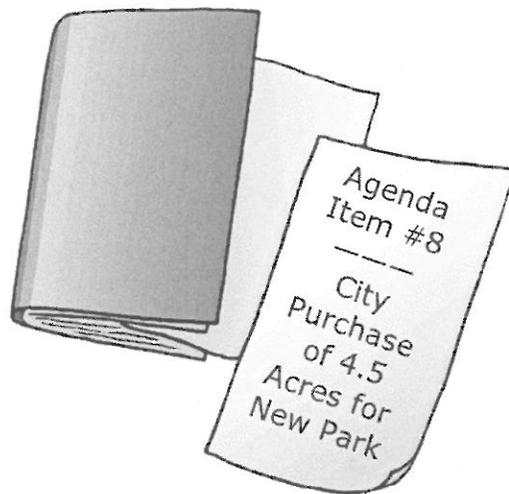
How to report improper acts

If you have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees, **call the California State Attorney General's Whistleblower Hotline at 1-800-952-5225**. The Attorney General will refer your call to the appropriate government authority for review and possible investigation.

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
Sacramento, CA 95814

Website:

www.fppc.ca.gov

Telephone:

Toll-free advice line:

1-866-ASK-FPPC
(1-866-275-3772)

Regular line: 1-916-322-5660

Enforcement hot-line:

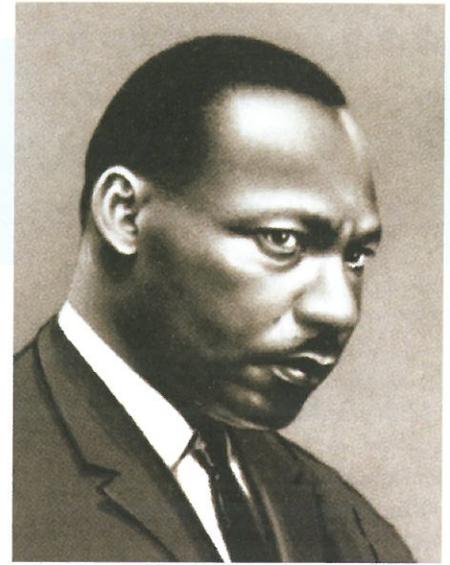
1-800-561-1861

**Fair Political
Practices Commission**

Resources for Leaders in Difficult Times

The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands in times of challenge and controversy.

— Martin Luther King Jr.



In the month of January, we honor Martin Luther King Jr.'s life and leadership. One way of honoring King's memory is to reflect on the principles for which he stood.

A key theme of many of King's observations is that leadership — true leadership — involves making difficult and sometimes unpopular choices based on one's core principles. It can also involve serving a community where people are frustrated and angry with forces that are outside local officials' control or influence.

While there is no easy answer to the difficult decisions local leaders must often make, a number of strategies can make such work easier. A key element of the Institute for Local Government (ILG) mission in service to local leaders is providing information on such strategies. The following examples offer good illustrations of these strategies.

The Ends Don't Justify the Means.

King repeatedly counseled his followers that "the means we use must be as pure as the ends we seek." Pursuing worthy goals using questionable means — that is, using approaches that are inconsistent with commonly held core values of trust, respect, responsibility and fairness — is inconsistent with King's teachings. In a similar vein, decision-making that reflects a leader's sense of what truly serves the public's interest, as opposed to narrow

economic, political or personal interests, is central to the concept of ethical public decision-making. Visit www.ca-ilg.org/trust for more resources on public service ethics principles and laws.

Listening Is a Leadership Skill. Determining what course of action best serves the public's interest is not always self-evident. Part of that determination involves seeking input from all elements of the community. Even as he encouraged peaceful demonstrations and resistance to unjust policies, King noted that riots are the voices of the unheard. ILG's information on public engagement strategies (at www.ca-ilg.org/publicengagement) offers local leaders help with bringing the public's voice to the local decision-making process.

How We Speak Matters. King was a proponent of civil public discourse. In explaining the nonviolent purpose of the March on Washington for Jobs and Freedom in 1963, King and others offered this insight:

In a neighborhood dispute there may be stunts, rough words and even hot insults; but *when a whole people speaks to its government, the dialogue and the action must be on a level reflecting the worth of that people and the responsibility of that government.* [Italics added for emphasis.]

As community leaders, local officials can play an important role in promoting civility in community debate by acknowledg-

ing that people of good will can disagree about what course of action will best move the community forward on an issue. A key strategy is to keep the conversations away from questioning the motivations or character of those whose ideas differ.

This is an area where local leaders have a tremendous opportunity to lead by example. ILG recently updated its work on this topic with a new tip sheet on ways to promote civil discourse. Visit www.ca-ilg.org/civility to access the tip sheet and ILG's other materials on this topic.

With respect to the subject of listening and welcoming diverse perspectives, ILG's work reflects the collective wisdom of the local government community. ILG welcomes local officials' input and contributions to its work in service to good government at the local level. If you are interested in learning more about ILG's work and how you can be a part of it, e-mail speersj@ca-ilg.org to be connected with the appropriate program staff. ■

Tips for Promoting Civility in Public Meetings

What is Civility?

In the context of democratic debate, civility is about how people treat each other. Civility involves the display of respect for those who have positions with which one disagrees.

Even though disagreement and confrontation plays a necessary role in governance and politics, the issue is *how* one expresses that disagreement. The key is to focus on the strengths and weakness of proposed solutions to community problems—not to engage in personal attacks against those who favor different solutions.¹

Specific Strategies

- **Embrace Diverse Points of View.** Local officials are grappling with difficult policy challenges. Bringing as many perspectives on what might be the best solution to a given problem increases the likelihood that the solution will indeed be successful and enduring.
- **Everyone Gets a Chance to Share Their Views.** Voltaire said "I may not agree with what you say, but I will fight to the death for your right to say it." Everyone's right to have their view heard is a central democratic value. Conversely, a strategy that relies on drowning other perspectives out usually results in a turning up of the volume and corresponding decreases in civility in discussions.
- **With Rights Come Responsibilities.** For there to be time for everyone to weigh in on an issue, there may need to be reasonable time limits on how long individuals speak. The goal is to create a culture in which as many people as possible (including decision-makers) are respectful of other people's time in attending and participating in the meeting.

About This Tip Sheet

This tip sheet is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on Local Government 101, go to www.ca-ilg.org/localgovt101.

The Institute welcomes feedback on this resource:

- *Email:* info@ca-ilg.org Subject: *Tips for Promoting Civility in Public Meetings*
- *Fax:* 916.444.7535
- *Mail:* 1400 K Street, Suite 205 • Sacramento, CA • 95814

- **Avoid Debates and Interruptions.** Interruptions should be discouraged so that individuals have the opportunity to complete their thoughts. A good practice for everyone participating in the conversation is to make a note of a question or different point of view that occurs to you when someone is speaking and then address that issue when it is one's turn to speak. This is an especially important approach for decision-makers to model.
- **Reduce Uncertainty.** Assuring people they will be allowed to share their views and how can reduce concerns that they will not be allowed to be heard. Explaining what process will be used to allow all views to be heard at the outset of a meeting or discussion item can reduce tension levels.
- **The Importance of Listening.** Listening is an important sign of respect, as is giving others the opportunity to listen. Decision-makers' active interest in what people are saying is vital. Repeating back core points that a speaker makes reassures the speaker that their message has indeed been heard—even if one does not necessarily agree with it. The mood turns ugly if the public thinks the matter has already been decided, decision-makers don't care about public input, or decision-makers are being impolite or disrespectful of the public they serve. Everyone attending a meeting should respect other attendees' right to both listen and be heard. One person should talk at a time, any private conversations should be taken outside or deferred, and cell phones should be turned off.
- **Be Compassionate About the Fear Factor/ Heckling and Applause Not Allowed.** Polls suggest many people fear public speaking.² This fear can come from concerns about being judged negatively or having ideas that people will ridicule or reject. Allowing cheering and booing or other forms of heckling discourages people from sharing their views (even silence or no applause can be perceived as rejection). It also runs the risk that those that do speak will focus more on getting applause than moving the conversation towards addressing

Agenda Guidance

Some local agencies include language to the following effect on their agendas:

Free expression of all points of view is an important democratic value in this community.

To allow all persons to speak who may wish to do so, each speaker is allowed a maximum of __ minutes. An effective approach is to lead with your key point or concern and then explain the reasons underlying it.

If others have already expressed your views, you may simply indicate that you agree with the previous speaker. If appropriate, a spokesperson may present the views of a group.

To encourage and respect expression of all views, meeting rules prohibit clapping, booing or shouts of approval or disagreement from the audience.

difficult issues. (Eye-rolling and grimacing can be non-verbal forms of heckling and also have no place in communities that value mutual respect.)

- **Separate People from The Problem.** Personal attacks or questioning people's motives or character rarely moves the conversation forward to a solution of a problem. In the book about effective negotiating called *Getting to Yes*,³ the authors encourage negotiators to attack the problem, not the people involved in the problem. Anything that approaches name-calling should be off limits.
- **Use Titles.** In meetings, a number of local agency officials refer to each other by title and last name (Supervisor Hassan, Council Member Lee, Board Member Aviña) as a verbal sign of respect that an individual has been elected and is participating in the conversation in that capacity. Using similar forms of respect for members of the public (Mr., Ms, Sir, Madam) when speaking can also reinforce the notion that everyone is engaged in a special kind of discussion.
- **Take a Break.** If conversations get heated, consider taking a break. As one veteran observer of public meetings noted "time can be an anti-inflammatory agent" that can give people a chance to calm down and restore order.⁴
- **Ejection a Last Resort.** If a recess does not work to restore order and other techniques are not successful, calling in the sergeant of arms is a last resort. A good practice is to create a record that disruptor was given ample warnings and opportunity to leave or reform their behavior voluntarily. If selective removal of one or more disruptors does not restore order, state law does allow clearing the room with the media allowed to remain⁵ (as an even more last resort).

A Note on Civility and Staff

Staff plays a critical role in providing service to the agency and the public the agency serves. An agency's ability to attract and retain capable and motivated staff is an important determinant of how satisfied the public is likely to be with the agency's performance and that of its elected officials.

An old management saw counsels those with oversight responsibilities to praise in public and criticize in private. That advice is sound for those in public service.

If an elected official has concerns about a staff member's performance or actions, a good practice to make the top administrative official of the agency aware of those concerns.

Similarly, a member of the public raises concerns about the performance of a public agency employee; refer it to management with a request for follow up.

If the communication is more in the nature of a personal attack, try to identify the underlying concern and respond to that. Separating people from the problem can be just as valuable a strategy when it comes to staff.

Parliamentary Procedure and Civility

Rules of parliamentary procedure are another tool to encourage civility and decorum at meetings. The most famous source of parliamentary procedure is Robert's Rules of Order. A good starting point is www.robertsrules.com/ (the "survival tips" page is especially helpful).

A former mayor and county supervisor (and now judge) has created a simplified version for use at the local level. Called "Rosenberg's Rules," the text and an explanatory video are accessible from the Institute's website at www.ca-ilg.org/rosenbergrules.

The following is an excerpt from Rosenberg's Rules on about courtesy and decorum:

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

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

Debate and discussion should be focused, but free and open. In the interest of time, the Chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is "no." There are, however, exceptions. . . .

Note that the chair may have greater latitude in enforcing decorum among decision-makers than between the public and decision-makers.

- **Walk the Talk.** For civility to be a regular part of community discourse, community leaders must set the standard. Scholars are concerned—and the data seems to demonstrate—that public officials’ incivility to one another contributes to voter alienation and antipathy toward public officials and public agencies.⁶

A good approach is to treat people how you would like to be treated. This includes a) limiting one’s statements in discussions to those that move the conversation forward, b) keeping one’s remarks brief, to the point and non-repetitive of comments others have made (other than to note one’s agreement), c) avoiding personal attacks (in public and private) and d) otherwise adhering to the strategies described above.

Resource for Further Reading

This tip sheet is a distillation and update of the Institute for Local Government’s 2003 whitepaper called *Promoting Civility at Public Meetings: Concepts and Practice*, available at www.ca-ilg.org/civility.

Additional resources from the Institute include *Dealing with Emotions at Public Hearings*, available at [http://www.ca-ilg.org/sites/ilgbackup.org/files/resources/Emotions and Conflicts in Public Hearings 2.pdf](http://www.ca-ilg.org/sites/ilgbackup.org/files/resources/Emotions_and_Conflicts_in_Public_Hearings_2.pdf) and *A Leader’s Role When Tragedy Strikes*, available at [http://www.ca-ilg.org/sites/ilgbackup.org/files/resources/Everyday Ethics April10.pdf](http://www.ca-ilg.org/sites/ilgbackup.org/files/resources/Everyday_Ethics_April10.pdf)

Conclusion

How a community conducts its public meetings is a reflection of the community and its values. As Dr. Martin Luther King’s observed:

In a neighborhood dispute there may be stunts, rough words, and even hot insults; but when a whole people speaks to its government, the dialogue and the action must be on a level reflecting the worth of that people and the responsibility of that government.⁷

Dr. King’s admonition to his listeners to set their standards of discourse high--irrespective of how others behave--is consistent with the quote from Gandhi to his followers that “you must be the change you wish to see in the world.”

Sample Codes of Civility

***Drafting Note:** A threshold issue is whether an agency's code will be positive or negative. In other words, will the code describe conduct that is prohibited or describe the kind of conduct it desires to be the norm. Describing the kind of conduct that is preferred has the advantage of being more instructive in setting the goal and encouraging people to meet that goal.*

Commitment to Civil Behavior

To maintain a cohesive, productive working environment, the members of the San Diego County Water Authority Board of Directors commit to:

1. Support the Authority's mission.
2. Bring Authority related concerns, issues, and conflicts to the Authority Board for discussion.
3. Offer alternative solution(s) when addressing a problem or issue.
4. Show respect to each other as appointed representatives of their member agencies.
5. Promote civility during Board meetings and tolerate nothing less.
6. Maintain the confidentiality of material discussed during closed Board meeting sessions. Similarly, not to disclose the content or substance of confidential or privileged communications relating to Authority business.
7. Limit the length of comments during Board meetings to three minutes per Director per item and not repeat points that already have been stated by other Directors.

Pledge of Civility

1. The manner in which we govern ourselves is often as important as the positions we take.
2. The organization's collective decisions will be better—and truer to our mission—when differing views have had the opportunity to be fully vetted and considered.
3. All those who appear before the organization's board and committees have the right to be treated with respect, courtesy, and openness. We value all input.

Accordingly, we commit to conduct ourselves at all times with civility and courtesy, to both those with whom the Board interacts and to each other. We also pledge to endeavor to correct ourselves, should our conduct fall below this standard.⁸

Resources and References

¹ Burgess, Guy and Heidi, *The Meaning of Civility*, Conflict Research Consortium at www.colorado.edu/conflict/civility.htm.

² <http://www.gallup.com/poll/1891/Snakes-Top-List-Americans-Fears.aspx> (fear of public speaking ranks second to fear of snakes).

³ Fisher, Roger and Ury, William L., *Getting to Yes: Negotiating Agreement Without Giving In* (1991).

⁴ See Vermont Institute for Government, *Born to Chair: An Introduction to the Science and Art of Chairing a Board Meeting* (1998), available at <http://www.sec.state.vt.us/municipal/pubs/chair.pdf> and <http://crs.uvm.edu/citizens/chair.pdf>, page 3.

⁵ See Cal. Gov't Code § 54957.9, which provides:

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.

⁶ Carter, Stephen L., *Civility: Manners, Morals and the Etiquette of Democracy* (1998) at 9.

⁷ *From the March on Washington for Jobs, Peace and Freedom*, 1963.

⁸ Adapted from the Pledge of Civility adopted by the California Public Employee Retirement System Board.

AGENDA ITEM
SPECIAL CITY COUNCIL MEETING DATE - FEBRUARY 11, 2012
BUSINESS ITEMS

DATE : January 30, 2011

TO : City Council

FROM : City Manager

SUBJECT : **REVIEW OF 2011-13 STRATEGIC PLAN AND IDENTIFICATION OF A WORK PROGRAM**

RECOMMENDATION:

Receive presentation and provide direction to staff.

EXECUTIVE SUMMARY:

The City Manager will present an update to the Council regarding the 2011-13 Strategic Plan and the City Council will review priorities for the next 12-month period.

BUDGET INFORMATION:

There is no immediate fiscal impact.

STRATEGIC PLAN:

Relevant Strategic Issues:

- Strategic Issue 1: Protecting Community Health and Safety
- Strategic Issue 2: Protecting and Enhancing the Environment
- Strategic Issue 3: Strengthening Economic and Fiscal Conditions
- Strategic Issue 4: Preserving and Enhancing Infrastructure
- Strategic Issue 5: Maintain and Enhance a High Quality of Life

BACKGROUND:

The City of Benicia for several years has approved a Strategic Plan as part of two-year budget adoption process. Formation of the Plan is a proven and thoughtful method for determining how an organization's resources can be most wisely allocated. However, in developing the plan, the document emphasizes the importance of conducting careful research and analysis before making resource allocation decisions. It is expected that this research and analysis will be comprehensive, long-term and inclusive (all stakeholders are invited and encouraged to participate).

The core of the plan is composed of the Strategic Issues, which are the most critical needs and opportunities facing the organization over the next two to five years. Within the Strategic Issues there are one or more Strategies (approaches) that have been identified to address the Strategic Issues. Finally the plan sets forth within each Strategy a series of Action Items, which are the specific projects and programs that will be pursued by the organization within the two-year budget period to implement the Strategies.

A key aspect of the Strategic Plan is that it assumes resources are constrained. It, therefore, is important that the Action Items be prioritized over the two-year budget period. Traditionally, Action Items have been chosen based on ones that will best address the strategies and issues identified in the plan. In addition Action Items chosen must be realistic and achievable with available resources within the planning period. It is here where the Strategic Plan and the two-year budget are interwoven to become a work plan for the organization. Resources required to implement the Action Items are considered and evaluated during the budget process. The City Council allocates available resources to their highest priorities.

The City faced daunting fiscal challenges in 2011, which required addressing a \$2.7 million dollar shortfall. Due to these challenges, the Council, in the spring of 2011, conducted an abbreviated update of the 2009-11 Strategic Plan. Two public workshops were held. At the workshops, changes were recommended by staff and input was received from the public. On June 28, 2011, the City Council approved the 2011-13 Strategic Plan (attached).

At the recent February 7, 2012 City Council meeting, staff provided a mid-year budget update. As was stated, while it appears our revenue and expenditure assumptions are currently on target, the economy is still very fragile and we must therefore remain very diligent in monitoring our financial condition and continue to seek opportunities to achieve organizational efficiencies to reduce costs. We must also be clear in our expectations for the organization and what we can realistically achieve as we adjust to the effects of the budget reductions.

The goal of this work session is to review the Strategic Plan Strategies and Action Items and develop a work plan that articulates the City Council's top priorities for the next twelve months. This time period has been chosen, as the organization will need to begin developing the City's next two-year budget (FY 13-15) in the coming months. It is important that the City Council and staff are clearly aligned in what will be accomplished during the next year so that within the strategic plan and budget process, we can attain our goal of achieving a sustainable budget and more importantly a long-term sustainable organization.

IV.B.2

Significant Accomplishments in 2011

Before we look forward, it is important to take a moment and recall what we have achieved over the last twelve months. In spite of the extremely difficult budget challenges, the Council, City departments and staff achieved a number of very notable accomplishments, which include:

- Preparation of the draft Business Development Action Plan
- Approved financing and initiated construction of the solar energy project
- Completion of the new Community Center and construction of the solar parking lot covers
- Implementation of a new web-based utility billing system called e-Care that allows citizens to pay their bills on line or sign up for automatic payments
- Completion of the Fire Station 12 renovation
- Resurfacing of Columbus Parkway from I-780 to Rose Drive and the West 7th/Southampton freeway ramp area
- Adoption of a new garbage contract, which will significantly improve services in the community and increase recycling efforts
- Renovation of the Dog Park
- Implementation of the Tourism Marketing Program, which included the Sunset Magazine article and participation in the Sunset Celebration Weekend event
- Adoption of the Historical Context Statement, which also won a California Preservation Foundation award
- Completion of the E. 2nd Street waterline replacement and street resurfacing project
- Establishment of monthly newsletters for the Police and Library Departments
- The City and the CSC conducted the Sustainable Economy education series, in cooperation with Dominican University
- The Library displayed a National Endowment for the Humanities traveling exhibit and provided a series of programs on Benjamin Franklin
- Received the Tree City USA Growth Award for the third consecutive year
- Constructed a 9-hole disc golf course at Benicia Community Park
- Completed Phase I of the Soroptimist Grove located at Benicia Community Park
- Worked with the majority of the City's employee bargaining units to come to agreement on compensation reductions, particularly in areas of health and pension costs, which achieved approximately \$1.3 million in ongoing structural savings to the City and helped to address a significant portion of a \$1.7 million budget shortfall.

Examination of Internal and External Factors Effecting the Organization

While there are indicators that the worst of the current economic crisis may be over, the future is far from certain. As noted at the recent February 7th budget review, even though the City's budget is basically on track with prior revenue projections, it is clearly prudent to remain cautious and continue to closely monitor the budget and all expenditures. Thus, State funding that several City departments rely on is far from certain in the coming years. The Library has already had to deal with the loss of \$110,000 in 2010-11 from the state, or roughly 5% of the library's total funding. Currently libraries, including Benicia's, are faced with the prospect of what will occur if Measure L, the sales tax renewal measure to be placed on the June ballot, does not pass. For the Benicia Library, it will result in losing approximately 30% of the Library's funding. Additionally, the Police Department's annual Supplemental Law Enforcement Fund (COPS) grant continues to be vulnerable to State's evolving budget shortfalls and restructuring. As also noted at the February 7th budget review, the City has a number of internal funds, such as the Marina and Workers Compensation Funds, which will require increased attention in the coming years.

In addition to operating in an unpredictable financial climate, the organization is now beginning to address many of the unintended consequences of previous cost-saving measures that were required to address budget shortfalls in 2010 and 2011. The hiring freeze and 2010 layoffs resulted in a significantly reduced City staff, with employees needing to do more with less in order to provide needed services to the community. For example, in the Public Works and Community Development Department, the number of employees has been reduced from 74 to 59. The Library and Parks departments have also dealt with significant reductions in staff, while other departments, such as Fire and Human Resources, have been operating without key management positions.

While all of the City departments have been performing admirably over the last two years, despite vacant positions, most are finding that these vacancies are not sustainable as it relates to the City's current level of services. Operating in such a mode over the long-term has a negative impact on employee morale and productivity. Over the next year, the organization will need to address the issue of whether to modify service levels, fill positions, or consider other alternatives for service delivery. Further, under such circumstances, certain areas have received less attention in order for staff to stay focused on priorities and providing basic services. One example of this is the deferral of facility and park maintenance over the last two years due to staffing shortages and a constrained budget.

In addition to the issues related to the hiring freeze, several departments are also facing the consequences of increased staff turnover in 2012, primarily due to

recent and upcoming retirements. For example, City staff is now beginning to expend significantly more time and resources on recruitment efforts. Further, recent compensation reductions are likely to make filling key positions in the organization more challenging. Finally, with turnover, the City also experiences the impacts associated with the loss of long-term and knowledgeable employees. The added time and resources involved in orienting and training new employees can be significant.

Another factor that is affecting workloads and our ability to achieve the Council's priorities is the increased level of scrutiny the organization has come under from the public and State and Federal agencies. All local government agencies are experiencing this as a result of the recession and the City of Bell scandal. The desire for increased transparency and accountability is not a bad thing, but it does require increased effort and improved communication skills by staff and modern technology to ensure citizens are receiving detailed, factual and timely information on City activities and in response to public and media inquiries.

Identifying City Priorities:

As noted previously, now that the 2011-12 budget shortfall has been addressed, it is an excellent opportunity to revisit the City's priorities and identify a work plan for the next 12 months that is realistic and takes into account the current economic environment and organizational constraints created by the recent budget balancing measures. This process will also lay the foundation for the strategic planning and budget process for 2013-15. Again, as we move forward, it will be important to keep in mind the organization's capacity, based on current resources, and whether any additions to programs and services are truly sustainable.

In preparation for the February 11th meeting the Executive Management Team (EMT) was asked to provide what they saw as the priorities for the City to accomplish over the next 12 months to give the Council a sense of what staff saw as our most immediate needs. To assist the EMT in determining what items constituted priority actions for the next twelve months the Team developed a set of Strategic Action Criteria, which are listed below.

- ❑ The work is mandated by the State (or other agency); the City could be fined or face similar consequences if the work is not done
- ❑ The work would generate revenue, grants or other funding
- ❑ The work would prevent higher costs from deferred maintenance

- The work would protect public health or safety
- The work would create the foundation for operational efficiencies
- The City is significantly committed financially to the project

The list of priority actions is attached. While the recommendations are extensive and diverse, a dominate theme from all departments was the need to enhance the capacity of the organization to provide the services desired by the community in the most effective and cost efficient way. In addition you can see that some of the priority actions are not listed in the current Strategic Plan. This highlights the importance of having both a Strategic Plan (2-5 years) and a short range work plan (1-2 years) that is regularly reviewed and updated as part of the quarterly budget reviews.

In addition, the Council's Two-step Policy Calendar items have been placed on a separate attached list, as those items have not yet been designated as formal programs or projects.

At the February 11th study session, the Council will first be asked to review the above-noted criteria and jointly agree to utilize this criteria in guiding their own prioritizing efforts during the study session, or come to consensus on a modified list of criteria. Next, each Council member will be asked to present their top five priority actions, which may be pulled from the 2011-13 Strategic Plan or not, and their reasoning as to why each is a priority action for the next year. For example, a Council member may decide that one of the "issues" discussed above, such as deferred maintenance, should be considered a priority action for the next year.

Each of the priority actions, as presented by Council, will be listed on poster paper at the study session. Next, following Council presentation and discussion of those priorities, the Council will "vote" with stickers for their top priority actions from the full list of Council priorities. Finally, after reviewing the results of that process and receiving public comment, the goal is to have a defined set of top priority actions that staff can then take away and use to develop a work program for the next 12 months.

Attachments:

- 2011-13 Strategic Plan
- Staff Recommended Top Priority Actions
- Policy Calendar
- Council Priority Action Form



City of Benicia
Strategic Plan
FY 2011-2013

Strategic Planning

The Strategic Planning process is a proven and thoughtful method for determining how an organization's resources can be most wisely allocated. Strategic Planning requires research and analysis before making resource allocation decisions; strategic planning decisions are not randomly made. Strategic Planning requires research and analysis that is:

1. **COMPREHENSIVE:** all of the City's functions and responsibilities are reviewed prior to allocation decisions.
2. **LONG-TERM:** the City's long-term needs and opportunities are reviewed prior to making allocation decisions.
3. **INCLUSIVE:** all stakeholders are invited and encouraged to participate in needs and opportunities assessment prior to allocation decisions.

Strategic Plan Elements

1. **MISSION STATEMENT:** a statement of the City's ultimate purpose and the difference it wishes to make for the community.
2. **VISION STATEMENT:** the character-defining elements of the ideal organization.
3. **VALUES STATEMENT:** the guiding principles the organization believes are right and should guide conduct.
4. **STRATEGIC ISSUES:** the major needs and opportunities facing the organization over the next two to five years that most impact achievement of the Mission and Vision. Numerous, important issues face any organization. The identified Strategic Issues are those that are perceived to be most critical.
5. **STRATEGIES:** one or more approaches to take in order to address the Strategic Issues.
6. **STRATEGIC PLAN ACTION ITEMS:** the specific projects and programs that will be pursued by the organization in the budget period (two years) to implement the Strategies.

The Strategic Plan differs from the City's General Plan in that the General Plan reflects the City's long-range vision. The Strategic Plan is a plan for the next two-five years that will help the City accomplish the goals of the General Plan with shorter-term strategies and actions.

Key points to keep in mind when developing a Strategic Plan include:

- Strategic Planning proceeds from the assumption that resources are limited so we must allocate them based on a review and identification of the highest priorities for the upcoming planning period (two-five years).

- Strategic Plan issues are the five +/- problems and opportunities that will arise in the planning period that will most impact achievement of the City's mission, vision and values.
- Strategic Plan strategies are the most promising approaches or general direction that will resolve the five Strategic Issues.
- Strategic Actions are the most effective projects, programs or activities that will execute or implement the strategies.
- It should be noted that Strategic Actions may be cross-cutting, that is they may fit under more than one Strategic Issue. Actions are listed under the Issue with which they are most clearly aligned.
- Actions selected can be new, already planned, or on-going. The point is identifying and selecting actions that will best address the strategies and issues identified in the plan.
- The package of actions selected should not be comprised of only those that are easily achievable. Instead, they should be ambitious, while realistically achievable within resources that can be assembled within the planning period.
- Ultimately, resources required will be considered and evaluated in the budget process. The budget process is about allocating available resources to priorities established by the City Council.
- The last major policy step in the Strategic Planning process is budget adoption.

Implementation Process

The City's Strategic Plan is achieved by pursuit of the following activities:

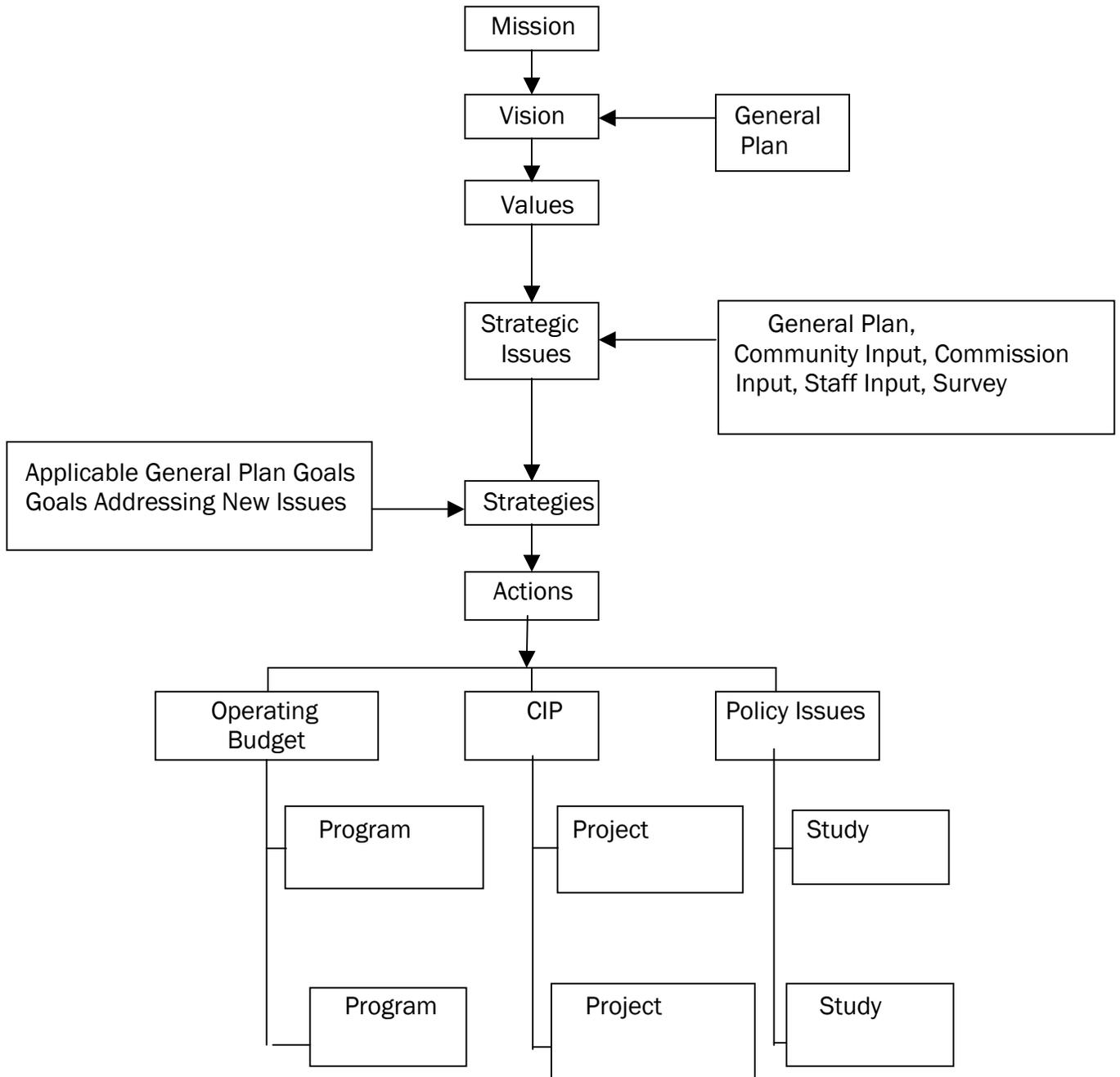
1. **BUDGET APPROPRIATION:** allocating our discretionary budget dollars to projects and programs that will address Strategic Plan Issues.
2. **DEPARTMENT STRATEGIC PLANS:** establishment of Strategic Plans by each department that include Actions that address Strategic Plan Issues.
3. **EMPLOYEE PERFORMANCE PLANS:** including objectives in the Performance Plan of every employee that addresses Strategic Plan Issues.

4. **MONITORING PLANS:**

- a. Employee Performance Plans: supervisors personally review and discuss the employee's performance plan on an annual basis.
- b. Strategic Action Plan: City Manager and Department Heads review progress once per month at staff meetings, and once per quarter at Council meetings.
- c. Performance Measures: The 2011-2013 Budget has performance measures identified in each of the department narratives. These measures will be useful for tracking progress on both the Citywide Strategic Plan Actions, as well as other departmental priorities.

The following pages illustrates the process, as well as each of the City's Strategic Plan elements and together comprise the City's Strategic Plan for 2011-2013.

Benicia Strategic Planning Process



City of Benicia

Mission, Vision and Values

City Mission:

- **Excellent Service**

City Vision:

- **To work together to build a sustainable community and enhance the City's overall quality of life.**

City Values or Guiding Principles:

- **Respect**
- **Responsiveness**
- **Integrity**
- **Inclusiveness & Collaboration**
- **Teamwork**

The Mission Vision and Guiding Principles of the Strategic Plan are consistent with the General Plan. The Strategic Plan supports accomplishment of the goals of the General Plan via shorter-term strategies and actions.

STRATEGIC ISSUE 1: Protecting Community Health and Safety

STRATEGIES

- 1) Provide modern and functional public safety facilities
- 2) Maintain adequate staffing for public safety and a strong EMS program
- 3) Provide a high state of preparedness for disasters/emergencies
- 4) Promote community preservation and prevent nuisances through increased code enforcement, environmental strategies and community education
- 5) Promote community and personal health

ACTIONS

- 1) (a) Investigate funding strategies for a functional police building
(b) Evaluate need to replace emergency generators at Fire Station 11
- 2) (a) Maintain current public safety service levels
(b) Explore opportunities for resource sharing/collaboration with other fire service agencies
(c) Explore opportunities for consolidation of fire and emergency medical dispatch services with other agencies
- 3) (a) Educate our citizens on the Community Alert Notification System, and conduct EOC trainings
(b) Establish a community real-time air monitoring system to alert the City and affected community of significant air quality issues
(c) Conduct Emergency Operations Center Exercises, at least twice annually.
(d) Ensure all city employees are trained at the proper levels to meet the National Incident Management System Standards
- 4) (a) Leverage code enforcement resources to resolve systemic quality of life issues
(b) Utilize technology to produce an effective and efficient use of resources
- 5) (a) Continue to support the Benicia Youth Action Coalition, a community collaborative, working together to reduce the underage use of alcohol, tobacco, and other drugs (ATOD) by Benicia Youth
(b) Review smoking ordinance
(c) Utilize library services and programs to promote community health

STRATEGIC ISSUE 1: Protecting Community Health and Safety - Continued

PRIMARY GENERAL PLAN GOALS

- ▶ GOAL 2.28: Improve and maintain public facilities and services.
- ▶ GOAL 4.22: Update and maintain the City's Emergency Response Plan.

STRATEGIC ISSUE 2: Protecting and Enhancing the Environment

STRATEGIES

- 1) Reduce greenhouse gas emissions and energy consumption
- 2) Implement new water conservation projects/programs
- 3) Pursue and adopt sustainable practices
- 4) Protect air quality

ACTIONS

- 1) (a) Pursue financing mechanism for home and business renewable energy and/or energy conservation methods
(b) Facilitate private construction of at least one alternative energy project
(c) "Buy green", if fiscally feasible
- 2) Pursue water conservation projects as opportunities arise
- 3) (a) Pursue LEED certification for community center
(b) Implement sustainable solid waste agreement
- 4) Pursue multiple mass transit opportunities

PRIMARY GENERAL PLAN GOALS

- ▶ Overarching Goal of the General Plan: Sustainability
- ▶ GOAL 2.36: Ensure an adequate water supply for current and future residents and businesses.
- ▶ GOAL 3.27: Improve energy efficiency.

STRATEGIC ISSUE 3: Strengthening Economic and Fiscal Conditions

STRATEGIES

- 1) Implement Economic Development Strategy
- 2) Strengthen Benicia Industrial Park competitiveness
- 3) Retain and attract business
- 4) Manage City finances prudently
- 5) Increase economic viability of industrial park and other commercial areas, while preserving existing economic strengths and historic resources

ACTIONS

- 1) (a) Update ED Strategy
 (b) Fund and provide staff support for BID proposal
 (c) Replace Nationwide sign with tourism sign on I-680 freeway
 (d) Continue tourism brand promotion and marketing (e.g., tourism website)
 (e) Formulate BIP Marketing program
 (f) Continue funding for non-profit arts and culture organization grants
 (g) Pursue planning grant for Downtown Waterfront Park
- 2) Approve and implement a road resurfacing project
- 3 (a) Prepare Business Development Action Plan
 (b) Continue and expand business support tools and policies that balance sustainability with economic vitality
 (c) Continue to collaborate with the Benicia Unified School District (BUSD) to support quality education*
- 4) Prepare and maintain balanced budget with strong emergency and contingency reserve and internal service funds
- 5) (a) Plan for sustainable Benicia Business Park including pursuing grants for transit oriented development area and Intermodal Station planning
 (b) Plan for investment in the Arsenal including hazard remediation
 (c) Update zoning code to encourage clean energy, high-tech R&D uses in industrial districts

**City staff is working with BUSD to explore alternative language relative to strategy and strategic actions that, once finalized, will be presented for Council consideration.*

STRATEGIC ISSUE 3: Strengthening Economic and Fiscal Conditions - Continued

PRIMARY GENERAL PLAN GOALS

- ▶ Overarching Goal of the General Plan: Sustainability
- ▶ GOAL 2.34: Ensure adequate school facilities to serve all residential areas.
- ▶ GOAL 2.35: Cooperate with the School District to provide opportunities for citizen use of the schools.
- ▶ GOAL 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.
- ▶ GOAL 2.28: Improve and maintain public facilities and services.
- ▶ GOAL 2.7: Attract and retain industrial facilities that provide fiscal and economic benefits to – and meet the present and future needs of – Benicia.

STRATEGIC ISSUE 4: Preserving and Enhancing Infrastructure

STRATEGIES

- 1) Provide safe, functional and complete streets
- 2) Increase use of mass transit
- 3) Address technology needs
- 4) Provide adequate funding for ongoing infrastructure needs

ACTIONS

- 1) (a) Fund street maintenance at a level that will improve pavement management index rating
(b) Obtain funding for and begin construction of Benicia Bridge /Arsenal Pedestrian Path Project
(c) Implement traffic calming work program
- 2) (a) Complete plans for and begin construction of park-and-ride facilities at City Park and W. Military at Southampton
(b) Continue to pursue designation for a WETA-Ferry stop in downtown area
(c) Continue planning for an intermodal transportation station in vicinity of Benicia Industrial Park and proposed Benicia Business Park
- 3) (a) Prepare a City government technology improvement plan
(b) Acquire and implement: 1) upgraded public safety technology, and 2) enhanced GIS capabilities
- 4) (a) Implement a plan for funding of reserves for vehicle, equipment and facilities infrastructure
(b) Fund bridge maintenance program

STRATEGIC ISSUE 4: Preserving and Enhancing Infrastructure - Continued

PRIMARY GENERAL PLAN GOALS

- ▶ Overarching Goal of the General Plan: Sustainability
- ▶ **GOAL 2.15:** Provide a comprehensive system of pedestrian and bicycle routes which link the various components of the community: employment centers, residential areas, commercial areas, schools, parks, and open space.
- ▶ **GOAL 2.17:** Provide an efficient, reliable, and convenient transit system.
- ▶ **GOAL 2.19:** Promote a regional (San Francisco, Oakland, Alameda) and local (Martinez, Port Costa, and Crockett) ferry service.
- ▶ **GOAL 2.20:** Provide a balanced street system to serve automobiles, pedestrians, bicycles, and transit, balancing vehicle-flow improvements with multi-modal considerations.
- ▶ **GOAL 2.28:** Improve and maintain public facilities and services.

STRATEGIC ISSUE 5: Maintain and Enhance a High Quality of Life

STRATEGIES

- 1) Operate community activity centers
- 2) Implement the Downtown Master Plan
- 3) Promote arts and culture
- 4) Preserve City-owned historic structures
- 5) Provide support to disadvantaged segments of the community
- 6) Support Benicia Public Library's ability to meet the public's expanding needs for information, communication and literacy

ACTIONS

- 1) (a) Open new community center
(b) Continue to provide support for the library as a community center
- 2) (a) Pursue outside funds for Downtown improvements (streetscape, parking and traffic calming enhancements)
(b) Review mixed use and other alternatives for the City's E Street lot
- 3) (a) Pursue funding sources for arts and culture activities
- 4) (a) Continue to seek tenant for occupancy of Commanding Officer's Quarters
(b) Maintain City-owned historic structures (e.g. Benicia Historical Museum, SP Depot, Clocktower)
- 5) (a) Obtain grants to provide a transitional shelter
(b) Facilitate construction of affordable housing per updated Housing Element
(c) Continue funding for Human Services grants
- 6) (a) Provide ongoing support for library and literacy services
(b) Plan for future basement expansion

STRATEGIC ISSUE 5: Maintain and Enhance a High Quality of Life – Cont.

PRIMARY GENERAL PLAN GOALS

- ▶ Overarching Goal of the General Plan: Sustainability
- ▶ GOAL 2.11: Encourage the retention and continued evolution of the lower Arsenal into a historical/cultural/commercial/industrial center of mutually compatible uses.
- ▶ GOAL 2.12: Strengthen the Downtown as the City's central commercial zone.
- ▶ GOAL 2.30: Maintain and improve existing parks and recreation programs.
- ▶ GOAL 3.1: Maintain and enhance Benicia's historic character.
- ▶ GOAL 3.3: Increase public awareness of cultural resources and activities.
- ▶ GOAL 3.4: Support the library and the services it provides the community.

Benicia Executive Management Team 12-Month Priority Actions

PRIORITY ACTIONS (Captured in Strategic Plan? Y or N)

Tier 1:

- Complete 2012 Employee negotiations (N)
- Complete compensation study (N)
- Improve staff communication and morale (N)
- Implement Business Development Action Plan (Y)
- Fill position vacancies and develop succession plans (N)
- Update Emergency Operations Plan (Y)
- Upgrade fleets – funding (Y)
- Complete installation of FCC Narrow Band upgrade (Y)
- Complete CAD/GIS Software upgrades (Y)
- Health Care Plan Redesign (N)
- Update Employer Employee Relations Resolution (N)
- Revive employee training efforts (N)
- Update email policy (Y)
- Complete Microsoft Office upgrade (Y)
- Complete Groupwise upgrade (Y)
- Develop IT Plan for City (Y)
- Complete Solar Project (Y)
- Complete Street Repair projects (Y)
- Complete Water Master Plan Update (Y)
- Conduct Sewer and Water Fee increase process, subject to Proposition 218 (N)
- Conduct L&LD 218 Process (N)
- Construct Park Road Sidewalk (Y)
- Construct Western/Downtown and Design Industrial Park Intermodal Facilities (Y)
- Obtain grants to provide a transitional shelter (Y)
- Complete Community Center Project (Y)
- Complete LEED Certification for Community Center (Y)
- Achieve resolution of State Parks Agreements (N)
- Review of FY 2011-12 and 2012-13 Budget and Development of Funding Strategies for Fund Deficits (Y)
- Update Financial Reporting Software (Y)
- Develop/Update Financial Policies/Procedures (Y)
- Adopt Alcohol Ordinances (Y)
- Adopt Smoking Ordinance (Y)
- Complete update of Americans with Disabilities (ADA) Transition Plan (N)
- Update Code Enforcement Ordinance (Y)
- Achieve resolution of Arsenal clean-up issue (Y)
- Update Sign Ordinance (N)
- Provide information to the public on the sales tax continuation (Measure L) (Y)
- Upgrade of online Integrated Library System, with full training for staff and public (Y)
- Reorganize the library to accommodate elimination of state funding (Literacy, in particular) (Y)
- Work with regional consortium/network to develop new model for material delivery, 2nd level reference, etc. (Y)

- Arts & Culture Commission Public Arts Policy (Y)
- Placing a Piece of Public Art in the community (Y)
- Explore increased efficiencies and revenue generation (Fire) (Y)
- Apparatus replacement (Fire) (Y)
- Fully implement the new Fire House Records Management System (Y)
- Initiate Waterfront Park Master Plan (Y)
- Develop water rescue capabilities in BFD (N)
- Update to Personnel Rules and select Personnel Policies (N)
- Enhance/improve City website (Y)

Current Policy Calendar Projects - To Be Scheduled			
Policy Calendar Item	Date Council Step 1 Approval	Last Action	Next Action
Vesting Tentative Map Review (Mayor Patterson)	11/18/2008	Planning Comm. 7/15/10	City Attorney to meet with Mayor re: Next Steps
Local Purchasing Policy (Council Member Schwartzman)	9/15/2009	Agendize for future meeting	Further discussion to occur with new CM re: Central Purchasing
Anti-Smoking Ordinance (Mayor Patterson)	10/20/2009	Parks Commission approved in Nov. Review with Chamber and Main Street	Return to Council
Tourism Event Policy (Mayor Patterson)	11/17/2009	Agendize for future meeting	TBD
Port Tax (Council Member Campbell)	8/17/2010	Agendize for future meeting	TBD
Police Building Space Needs (Staff)	9/26/2008	Agendize for future meeting	TBD
Lower Arsenal Plan (Staff)	N/A	Planning Comm. 7/8/10 (Rec. changes to Plan and EIR)	TBD (Direction to staff regarding timing and options for modifying Plan/EIR)
Request to agendize consideration of a Benicia Industrial Park Information Technology Needs Feasibility Options (Mayor Patterson)	6/21/2011	Agendize for future meeting	TBD
A request to consider amending Chapter 1.40 of the Benicia Municipal Code to prohibit contacting a contributor by someone other than the candidate or campaign treasurer (Council Member Schwartzman)	1/17/2012	Agendize for future meeting	TBD
A request to consider an amendment that would add a provision to the voluntary Code of Fair Campaign Practices allowing soliciting at the Farmer's Market no closer than 50 feet from any of the entrances to the market (Council Member Schwartzman)	1/17/2012	Agendize for future meeting	TBD
A request to review and discuss each board and commission's mission, compliance with their respective mission, make up, possible changes, potential consolidations, adherence to codes, policies and Council expectations to include consideration of the current budget constraints and staff resources (Council Member Schwartzman)	1/17/2012	Agendize for future meeting	TBD
A request to discuss revisiting the design review duties and powers of the Historic Preservation Review Commission. (Council Member Campbell)	2/7/2012	Agendize for future meeting	TBD
A review of ICLEI (per 2/7 request)	Pending	TBD	TBD

City Council Strategic Planning Study Session – February 11, 2012
Council Priority Action Form

On the lines below, please list your top five priority actions for the next 12 months. Please be prepared to take approximately five minutes to present your top priorities at the February 11th study session.

1. Priority Action: _____
Reason: _____

2. Priority Action: _____
Reason: _____

3. Priority Action: _____
Reason: _____

4. Priority Action: _____
Reason: _____

5. Priority Action: _____
Reason: _____

Council Member _____ (insert name)

Following the study session, please submit your completed form to the City Manager's Office.
Thank you!

