CITY OF TEMECULA

CITY COUNCIL PROTOCOL MANUAL

Temecula
The Heart of Southern California Wine Country

UPDATED NOVEMBER 14, 2023

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POLICY NO. 1

GENERAL LAW CITY

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**General Law City**
Policy No.	**1**
Approved:	**May 23, 2023**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to reaffirm adherence to and acknowledgment of the City of Temecula as a general law city and include said policy in the City Council Protocol Manual.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Adherence to and Acknowledgment of the City of Temecula as a General Law City

Local government agencies are established through the California Government Code and Article XI of the California Constitution. Local government agencies include counties, cities, special districts, and other regional bodies. The City of Temecula is a local government agency pursuant to these laws and incorporated as such on December 1, 1989. Cities provide essential and general services and programs for their residents such as health and safety and parks and recreation.

Article XI, § 3 of the Constitution of California specifically provides for the creation of city government. As of the date of adoption of this policy, there are 482 incorporated cities in the State of California. Government Code §34100 et seq. sets forth the two types of cities - general law and charter. General law cities, the most common form, are governed by the California Government Code and other statutes. Charter cities, consisting of approximately one-quarter of the cities in California, are governed by their adopted charter. Matters deemed to be of "statewide concern" by the State of California, may be governed by statute irrespective of general law or charter designation.

The City of Temecula is a general law city existing and operating pursuant to the laws set forth in the California Constitution, California Government Code, and other relevant statutes.

POLICY NO. 2

COUNCIL-MANAGER FORM OF GOVERNMENT

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Council-Manager Form of Government**
Policy No.	**2**
Approved:	**May 23, 2023**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to reaffirm that the City of Temecula operates as a council-manager form of government and include said policy in the City Council Protocol Manual.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Operation as a Council-Manager Form of Government

The council-manager form of government is the most common type of governance structure amongst cities in the United States. Under this form of government, residents elect a governing body (city council) to adopt legislation and set policy. The governing body then hires a manager or administrator with broad executive authority to carry out those policies and oversee the local government's day-to-day operations. This structure is similar to that of a corporation in the private sector whereby a board of directors sets forth policy and a chief executive officer implements such policy.

The council-manager form of government recognizes the critical role of elected officials as policy makers, who focus on mapping out a collective vision for the community and establishing the policies that govern it. The form also recognizes the need for a highly-qualified individual who is devoted exclusively to the delivery of services to residents. Under the council-manager form, there is a clear distinction between the administrative role of the manager and the political and policy roles of the governing body. The operations of the local government organization reside with the appointed manager, allowing elected officials to devote their time and energy to policy development and the assessment of the effectiveness of those policies within the community.

Government Code Section §34851 et seq. sets forth the process by which a council-manager form of government may be established in California. Temecula Municipal Code § 2.12 et. seq., adopted pursuant to the aforementioned code section, sets forth the specific duties, powers, and responsibilities of a city manager in relation to their service to the City of Temecula.

The municipal structure of the City of Temecula is a council-manager form of government operating pursuant to the laws set forth in the California Government Code and Temecula Municipal Code.

POLICY NO. 3

ROLE OF MAYOR, MAYOR PRO TEMPORE AND CITY COUNCIL

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Role of Mayor, Mayor Pro Tempore and City Council**
Policy No.	**3**
Approved:	**May 23, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to reaffirm the role of the Mayor, Mayor Pro Tempore and City Council and include said policy in the City Council Protocol Manual.

POLICY:
The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Role of Mayor, Mayor Pro Tempore and City Council

The City of Temecula is a general law city, operating as a council-manager form of government, with a five-member, non-partisan legislative body. The legislative body is referred to as the city council. Each council member is directly elected by the registered voters of their district. The positions of mayor and mayor pro tempore are ceremonial in nature and not directly elected. The city council selects the mayor and mayor pro tempore amongst themselves and the positions typically serve a calendar year.

The mayor is the public face of the community who presides at meetings, facilitates communication and understanding between elected and appointed officials and the public, and assists the legislative body in setting goals and advocating policy decisions. The mayor facilitates discussion and decision-making on important topics. The mayor pro tempore assists the mayor in fulfilling their role and presides in the absence of the mayor as needed.

The primary role of the city council is to engage with the community to determine needs and in response provide policy direction to ensure a high quality of life for all. The city council exercises its authority and sets policy through an ordinance, resolution, or minute order capturing its collective action on a variety of topics such as health and safety, fiscal stability, and growth and sustainability. The city council also adopts the annual budget, appoints members to its advisory boards and commissions, and manages the positions of the city manager and city attorney. All other employees in the City of Temecula remain the management responsibility of the city manager and department directors appointed by the city manager. General day-to-day operations remain under the purview of the city manager appointed by the city council.

The above reaffirms the role of the mayor, mayor pro tempore, and city council in the City of Temecula, a general law city with a council-manager form of government.

POLICY NO. 4

CODE OF CONDUCT

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Code of Conduct**
Policy No.	**4**
Approved:	**September 28, 2021**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to provide for considerate and thoughtful civil discourse through which respectful dialogue can occur in the best interest of the community.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

1. Elected and Appointed Officials' Conduct with One Another
Elected officials are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Notwithstanding this diversity, all have chosen to serve in public office in order to preserve and protect the high quality of life of the community. Even in the face of adversity and differences of opinion, this common goal is acknowledged and remains at the forefront.

1(a). In Public Meetings

Formal titles and professional appearance
Elected officials will refer to one another formally during public meetings, such as Mayor, Mayor Pro Tempore, Chair, or Council Member followed by the individual's last name. Council Members shall present a professional appearance in all public meetings.

Civility and decorum in discussions and debate
Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. While public officials have a right to state their opinions, public officials should set an example and refrain from personal, slanderous, threatening, abusive, or other disparaging comments. Shouting or physical actions that could be construed as threatening will not be tolerated.

Role of Mayor in maintaining order
It is the responsibility of the Mayor to keep the comments of members on track during public meetings. Members should honor efforts by focusing discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in the City Council Rules of Order.

Effective problem-solving approaches

Members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole. Outside of official meetings, individual members represent themselves and not the City as a whole unless specifically authorized to do so by law or City Council policy. In private settings, members may communicate their individual viewpoints and opinions unless otherwise prohibited by law. In public, all members should strive to represent the official policies or positions of the City and City Council, although both the majority and minority viewpoint reflected in discussion may be shared or reported on.

1(b). In Private Encounters

Respectful behavior in private

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

Insecurity of written notes, voicemail messages, and e-mail

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

Private conversations with a public presence

Elected officials are always on display and should be aware that their actions, mannerisms, and language are monitored by people around them that they may not know and may be shared with others unbeknownst to them.

2. Elected and Appointed Officials' Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected officials, and staff who implement and administer City Council direction and policy. Every effort should be made to show mutual respect for the contributions made by all for the betterment of the community.

Staff as professionals

The general expectation for all is clear and honest communication respecting the abilities, experience, and dignity of each individual. Contrary behavior towards staff is not acceptable.

Public criticism of employees

Elected officials should refrain from expressing concerns about individual employee conduct or performance in public, to the employee directly, or to the employee's manager. Such comments should be shared with the City Manager directly through private correspondence or conversation.

Involvement in administrative functions

In accordance with Section 2.12.080 of the Temecula Municipal Code, elected officials should not attempt to influence staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, granting of City licenses and permits, or any other administrative functions or operations of the City that fall within the purview of the City Manager.

Requests for staff support

Routine administrative support is provided to all Council Members. The Executive Assistant or others designated in the City Manager's Office, open and distribute mail, manage calendars and scheduling of meetings, and perform other similar administrative tasks for the City Council. Requests for additional staff support should be made to the City Manager directly to ensure proper allocation of resources.

Solicitation of political support

Elected officials shall not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace without utilizing any City equipment and/or resources.

3. Elected and Appointed Officials' Conduct with the Public

3(a). In Public Meetings

Making the public feel welcome is an important part of the democratic process. Every effort should be made to be fair and impartial in listening to public testimony. While questions of clarification may be asked, the elected official's primary role during public testimony is to actively listen.

Maintain an open mind

Members of the public deserve an opportunity to influence the thinking of elected officials. To express an opinion prior to the close of debate or a public hearing casts doubt on the ability to obtain a fair review of the issue. This is particularly important when officials are serving in a quasi-judicial capacity and in these cases Council Members shall not express an opinion on the matter prior to the completion of the public hearing or receive evidence on the matter outside of the public hearing.

Asking for clarification and avoiding debate

Only the Mayor can interrupt a speaker during a presentation. However, a Council Member can ask the Mayor for a point of order if the speaker is off the topic or exhibiting disruptive behavior. It is the responsibility of the Mayor to remain calm at all times, keep the speaker focused, and maintain the order and decorum of the meeting. The Mayor and all members of the City Council should follow the City Council Rules of Order in conducting public meetings and the City Attorney is present to make any final rulings on meeting procedures if needed.

3(b). In Unofficial Settings

Members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council or board/commission action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.). It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other members, their opinions and actions. Members shall refrain from expressing any opinions related to quasi-judicial land use matters in all unofficial settings as such discussions must occur in public meetings for the official record. Unofficial settings include internet and social media platforms (i.e., Facebook, Twitter, blogs, etc.)

4. Enforcement

The Code of Conduct expresses standards of conduct expected for members of the Temecula City Council. 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 local government. Members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose committee assignments, or have other official representation on behalf of the City restricted. Serious infractions of the Code of Conduct could lead to other sanctions as deemed appropriate by the Council.

POLICY NO. 5

RULES OF ORDER FOR PUBLIC MEETINGS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Rules of Order for Public Meetings**
Policy No.	**5**
Approved:	**September 28, 2021**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to ensure that the business of the people that is conducted at a public meeting is done so in a clear, concise and orderly manner.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Obtaining the Floor. Any Council Member wishing to speak must first obtain the floor by being recognized by the Mayor. The Mayor must recognize any Council Member who seeks the floor when that Council Member is appropriately entitled to do so.

Council Discussion. Following the staff report and public comments on an item, the Council may discuss the matter before a motion is made.

Motions. The Mayor or any member of the Council may call for action on any matter before the Council by making a motion. Before the motion can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Mayor shall open the matter for debate offering the first opportunity to debate to the moving party and, thereafter, to any Council Member properly recognized by the Mayor. Once the motion has been fully debated and the Mayor calls for a vote, no further debate will be allowed. However, Council Members may be allowed to explain their vote.

Council Questions Only During Staff Report or Public Comment. Council participation during the presentation of public testimony or staff reports shall be limited to questions asked at the conclusion of the testimony. No general discussion should be permitted until the testimony has been completed. Council discussion not relevant to the agenda item should be reserved for the City Council Reports portion of the agenda.

Voting. If the vote is a voice vote, the Mayor shall declare the result and note for the record all yes votes and all no votes. The Council may also vote by roll call or electronically. Regardless of the manner of voting, the results reflecting all yes and no votes and the Council Members who cast them must be clearly set forth in the minutes of the meeting. No secret ballots are allowed. To be adopted, a motion requires the yes vote of a majority of the quorum present, unless the vote of three Council Members is required

by statute, ordinance, or resolution. If a member is disqualified from voting, the member shall not participate in the consideration of the matter and shall not be counted for the purpose of the quorum. In addition, as required by the Fair Political Practices Act and regulations the member shall leave the dais and the Council chamber during the consideration of the matter, except for matters on the Consent Calendar. If, however, the matter is being considered on the Consent Calendar and has not been removed from the Consent Calendar, the Council Member may remain on the dais and disclose the reason for disqualification. A disqualified Council Member may speak on the matter as a private citizen, but only to the limited extent allowed by the Section 18702.5 of the Regulations of the Fair Political Practices Commission, or its successor sections. A tie vote means no action has been taken on the motion.

Procedural Rules of Order. Once the main motion is properly placed on the floor, several related motions may be employed in addressing the main motion, and if properly made and seconded, must be disposed of before the main motion can be acted upon. The following motions are appropriate and may be made by the Mayor or any Council Member at any appropriate time during the discussion of the main motion. They are listed in order of precedence. The first three subsidiary motions are not debatable; the last three are debatable.

Subsidiary Motions.

Lay on the Table. Any Council Member may move to lay the matter under discussion on the table. This motion temporarily suspends any further discussion of the pending motion without setting a time certain to resume debate. To bring the matter back before the Council, a motion must be adopted that the matter be taken from the table. A motion to take from the table must be made at the same meeting at which it was placed on the table or at the next meeting of the Council. Otherwise the motion that was tabled dies, although it can be raised later as a new motion. A motion to lay on the table is not debatable.

Move Previous Question. Any Council Member may move to immediately bring the question being debated by the Council to a vote, suspending any further debate. The motion must be made and seconded without interrupting one who already has the floor. A majority vote of the quorum present is required for passage. A motion to move previous question is not debatable.

Limit or Extend Limits of Debate. Any Council Member may vote to put limits on the length of debate. The motion must be made and seconded and requires a majority vote of the quorum present to pass. A motion to limit or extend limits of debate is not debatable.

Postpone to a Time Certain. Any Council Member may move to postpone debate and action on a motion to a date and time certain. A motion to postpone to a time certain is debatable.

Commit or Refer. Any Council Member may move that the matter being discussed should be referred to staff, a committee, or a commission for further study. The motion may contain directions for the staff, committee, or commission, as well as a date upon which the matter will be returned to the Council's Agenda. If no date is set for returning the item to the Council Agenda, any Council Member may move, at any time, to require that the item be returned to the Agenda. A motion to commit or refer is debatable.

Amend. Any Council Member may amend the main motion or any amendment made to the main motion. Before the main motion may be acted upon, all amendments and amendments to the amendments must first be acted upon. An amendment must be related to the main motion or amendment to which it is

directed. Any amendment that substitutes a new motion rather than amending the existing motion is out of order and may be so declared by the Mayor. A motion to amend is debatable.

Motions of Privilege, Order, and Convenience. The following actions by the Council are to ensure orderly conduct of meetings and are for the convenience of the Mayor and Council Members. These motions take precedence over any pending main or subsidiary motion and may be debated except as noted.

Call for Orders of the Day. Any Council Member may demand that the agenda be followed in the order stated therein. No second is required, and the Mayor must comply unless the Council, by majority vote, sets aside the agenda order of the day.

Request for Privilege. Any Council Member, at any time during the meeting, may make a request of the Mayor to accommodate the personal needs of the Council for such things as reducing noise, adjusting room temperature, ventilation, etc. The validity of the request is ruled on by the Mayor.

Recess. Any Council Member may move for a recess. No second is required, and the Mayor must comply unless the Council, by majority vote, sets aside the motion.

Adjourn. Any Council Member may move to adjourn at any time, even if there is business pending. The motion must be seconded, and a majority vote is required for passage. A motion to adjourn is not debatable.

Point of Order. Any Council Member may require the Mayor to enforce the rules of the Council by raising a point of order. The point of order shall be ruled upon by the Mayor.

Appeal. Should any Council Member be dissatisfied with a ruling from the Mayor, he or she may move to appeal the ruling to the full Council. The motion to appeal requires a second, and the ruling of the Mayor may be overturned by a majority vote of the members present.

Suspend the Rules. Any Council Member may move to suspend the rules if necessary to accomplish a matter that would otherwise violate the rules. The motion requires a second, and a majority vote is required for passage.

Division of Question. Any Council Member may move to divide the subject matter of a motion which is made up of several parts so that Council Members can vote separately on each part. This motion may also be applied to complex ordinances or resolutions.

Reconsider. Except for votes regarding matters that are quasi-judicial in nature or matters that require a noticed Public Hearing, the Council may reconsider any vote taken at the same meeting, but no later than the same or next regular meeting, to correct inadvertent or precipitant errors or to consider new information not available at the time of the vote.

The motion to reconsider must be made by a Council Member who voted on the prevailing side, must be seconded, and requires a majority vote of the quorum for passage, regardless of the vote required to adopt the motion being reconsidered. If the matter is to be reconsidered at the next regular meeting, a Council Member on the prevailing side must ask the City Clerk to place the matter on the agenda or

otherwise comply with the Government Code. If the matter to reconsider is successful, the matter to be reconsidered takes no special precedence over other pending matters and any special voting requirements related thereto still apply. Except pursuant to a motion to reconsider, once a matter has been determined and voted upon, the same matter cannot be brought up again at the same meeting.

Rescind, Repeal, or Annul. The Council may rescind, repeal, or annul any prior action taken with reference to any legislative matter so long as the action to rescind, repeal, or annul complies with all the rules applicable to the initial adoption, including any special voting or notice requirements or unless otherwise specified by law.

Council Authority. The Council shall have the authority to waive provisions of the procedures established by this Resolution unless the procedure is required. Failure of the Council to follow the procedures established by this Resolution shall not invalidate or otherwise affect any action of the Council.

POLICY NO. 6

PUBLIC PARTICIPATION AT MEETINGS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Public Participation at Meetings**
Policy No.:	**6**
Approved:	**September 28, 2021**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to ensure that the community can formally address their local representatives in a public meeting regarding matters that relate to Council business or citizen concerns within the subject matter jurisdiction of the City Council.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

PUBLIC PARTICIPATION IN COUNCIL MEETINGS

Audience Decorum. Members of the audience have the right to express their views about items on the agenda or issues within the jurisdiction of the City subject to the time, place and manner rules described in this Policy. Actions expressing the views of members of the public, such as clapping, whistling; stomping; sign waving are permitted as free speech so long as the actions do not disturb, disrupt, or otherwise impede the orderly conduct of the meeting. The Council expects persons speaking at City Council meetings to do so in a civil manner that promotes the free exchange of ideas and encourages public participation.

Request to Speak Form. Members of the public may address the City Council during Public Comments and before consideration of any agenda item; however, no person shall address the Council without first being recognized by the Mayor. Any person wishing to speak, whether during Public Comments, Consent Calendar, or on an agenda item, shall first complete a Public Comment or Request to Speak form and submit this form to the City Clerk or Deputy City Clerk before the Mayor calls for Public Comments or calls the particular agenda item. A speaker is not required to list his or her name and address, but doing so does helps the Council and staff to provide follow-up information to the speaker if needed. Speakers shall be called in the order their Request to Speak form is received by the City Clerk or Deputy City Clerk.

Speak Only Once. Second opportunities for the public to speak on the same issue will not be permitted unless mandated by state or local law.

Addressing the Council. Comment and testimony shall be directed to the Council through the Mayor. Dialogue between and inquiries from citizens at the podium and individual Council Members, members

of staff, or the seated audience is not permitted. Council Members seeking to clarify testimony or gain additional information should direct their questions through the Mayor.

Public Comments to City Council

Non-Agenda Items and Consent Calendar. The public has right to comment on matters within the jurisdiction of the City that are not listed on the agenda as provided in this Policy. The agenda shall provide for such public comments. Public Comments will be heard at the meeting in the manner noted on the agenda. A maximum of thirty (30) minutes shall be allowed for such public comments. A member of the public who wishes to speak under Public Comments may fill out a Public Comment Request to Speak form and submit it to the City Clerk or Deputy City Clerk before the Mayor calls for Public Comments. Persons may speak under Public Comments for three (3) minutes. Deferral of one speaker's time to another is not permitted.

State law prohibits the City Council from taking action on any item not listed on the agenda unless the Council makes a determination that an emergency exists or that the need to take immediate action on the item arose subsequent to the final posting of the agenda. Council Members or staff members may provide brief response to comments, ask brief questions of the speaker, refer the speaker to staff or another agency, or request that the matter be placed on an agenda in a manner that is consistent with the City Council policy for the placement of items on a future agenda. Council Member or staff responses shall not exceed three (3) minutes each.

Consent Calendar Items. Members of the public who wish to speak on a Consent Calendar item will be allowed to speak for a maximum period of 30 minutes prior to the consideration of the Consent Calendar. Persons may speak on Consent Calendar items for three (3) minutes each. Deferral of one speaker's time to another is not permitted.

Agenda Items. The public has a right to comment on agenda items. A member of the public who wishes to speak on an agenda item may fill out a Request to Speak form and submit it to the City Clerk or Deputy City Clerk before the Mayor calls the agenda item. Subject to the special provisions discussed below for Public Hearings, persons may speak about an agenda item for a maximum of five (5) minutes. Deferral of one speaker's time to another is not permitted. In the event there is a large number of speakers, the Mayor may reduce the maximum time limit for members of the public to speak on the item.

Disruptive Behavior Prohibited at Council Meetings. The Council expects persons speaking at the City Council meeting to do so in a civil manner that promotes the free exchange of ideas and encourages public participation. Any person who engages in behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of any City Council meeting shall, upon an order by the Mayor, or the presiding officer, or a majority of the City Council, be barred from further audience before the City Council during that meeting.

> <u>Examples of disruptive behavior.</u> Examples of behavior that can actually disrupt, disturb, or otherwise impede the orderly conduct of a City Council meeting include, but are not limited to, the following:
>
> (1) Speaking without being recognized by the Mayor or the presiding officer.

(2) Continuing to speak after the allotted time has expired.

(3) Speaking on an item at a time not designated for discussion by the public of that item.

(4) Throwing objects.

(5) Speaking on an issue that is not within the jurisdiction of the City Council.

(6) Speaking to the audience rather than to the City Council.

(7) Interrupting a person who is speaking to the City Council during such person's allotted time.

(8) Preventing a person from speaking to the City Council during such time as is allocated for comments from the public.

(9) Wearing of a mask, costume, disguise or other regalia or paraphernalia that actually disrupts, disturbs or otherwise impedes the orderly conduct of the City Council meeting.

(10) Uttering loud, threatening, or abusive language that actually disrupts, disturbs or otherwise impedes the orderly conduct of the City Council meeting.

(11) Clapping, whistling, stomping feet, and sign waving that actually disrupts, disturbs or otherwise impedes the orderly conduct of the City Council meeting.

Enforcement. The rules of conduct for City Council meetings set forth in this section shall be enforced in the following manner:

(1) *Warning to desist.* Whenever practicable, the Mayor, or the presiding officer, or a majority of the City Council shall give a warning to a person whose behavior is actually disrupting, disturbing or otherwise impeding the orderly conduct of a City Council meeting. The warning shall identify the disruptive behavior and the manner in which the person must comply. A warning shall not be necessary when it would not be effective due to extraordinary circumstances. Examples of extraordinary circumstances in which no warning is required include situations in which a warning would be difficult to hear over the noise of the disturbance; situations involving an immediate threat to public safety such as the throwing of objects or the display of a weapon; and situations involving a person who has been warned about the same type of disruptive behavior at a City Council meeting held within the prior thirty (30) calendar days.

(2) *Recess.* If, after receiving a request from the Mayor, the person persists in violating the rules, the Mayor may order a recess. Any representative of law enforcement who is present at the meeting when the violation occurs shall be authorized to warn the person that his or her conduct is violating the rules and that he or she is requested to cease such conduct.

(3) *Order barring person from meeting*. The Mayor, or the presiding officer, or a majority of the City Council may issue an order barring a person from the remainder of a City Council meeting if such person was warned at that City

Council meeting about disruptive behavior and such person again engages in behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of the meeting. Additionally, the Mayor, or the presiding officer, or a majority of the City Council may issue an order barring a person from the remainder of a City Council meeting without a warning if there are extraordinary circumstances and the person engages in behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of the meeting.

(4) *Removal.* If a person barred from the remainder of a City Council meeting does not voluntarily exit the Council chambers, the Mayor, or the presiding officer, or a City Council majority may direct the Sergeant-at-arms to remove that person from the Council chambers and exclude that person for the remainder of that meeting.

(5) *Clearing the Room*. Pursuant to Government Code Section 54957.9, in the event that any meeting is willfully interrupted by a person or groups of persons so as to disrupt, disturb or otherwise impede the orderly conduct of such meeting and order cannot be restored by the removal of the individuals who are willfully interrupting the meeting, City Council may order that the meeting room may be ordered cleared and the meeting shall continue in session. The motion to clear the room shall be by a vote not less than three members of the City Council in favor. 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 Government Code Section 54957.9.

(6) *Violation of the California Penal Code.* A person or persons who substantially impairs the conduct of a City Council meeting by knowingly and intentionally violating these rules of decorum may be prosecuted under Penal Code Section 403 for disturbing a public meeting. Every person who violates Penal Code Section 403 is guilty of a misdemeanor.

Unlawful behavior. The following conduct shall be unlawful:

(1) Engaging in behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of a City Council meeting after receiving a warning at that meeting from the Mayor, or the presiding officer, or a City Council Member.

(2) Refusing to leave the Council chambers after being barred for the remainder of a City Council meeting by the Mayor, or the presiding officer, or a City Council majority.

(3) Returning to the Council chambers before the conclusion of a City Council meeting after being barred for the remainder of that meeting by the Mayor, or the presiding officer, or a City Council majority.

Sergeant-at-arms. The Sheriff, or such members of the Sheriff's Department as he or she may designate, shall attend each Council meeting and shall be Sergeant-at-arms of the City Council unless otherwise directed by the City Manager. The Sergeant-at-arms shall

carry out all lawful orders given by the Mayor, or the presiding officer, or a majority of the City Council for the purpose of maintaining order at City Council meetings. The Sergeant-at-arms shall have the authority and power to enforce the orders of the Mayor, or the presiding officer, or a majority of the City Council relating to the order and conduct of City Council meetings. Any Council Member may move to require the Mayor, or presiding officer, to enforce the rules of conduct and a majority vote of the Council shall require him or her to do so.

Motion to Enforce. If the Mayor fails to enforce the rules of decorum set forth herein, any Council Member may move to require the Mayor to do so, and an affirmative vote of three members of the Council shall require the Mayor to do so. If the Mayor fails to carry out the will of the majority of the Council in this matter, the Council by an affirmative vote of three Council Members may designate another Council Member to act as Mayor for the limited purpose of enforcing the rules of decorum established herein for that meeting.

PUBLIC HEARINGS

Process and Procedures. The City Council conducts Public Hearings on applications, projects, and other matters as required to provide due process of law. The following outlines the process under which Public Hearings will be conducted. Staff will review the application/project/matter, will prepare a staff report, and may make a recommendation or propose alternatives to the City Council prior to the Public Hearing.

A notice of the Public Hearing shall be posted, published, and mailed as required by law and the Temecula Municipal Code. The members of the City Council will receive the staff report for the application/project/matter in the agenda packet prior to the meeting. This provides the Council with an opportunity to study the staff report, which will become part of the hearing record, and to become familiar with the project prior to the Public Hearing. When the Public Hearing is called, staff shall summarize the application/project/matter as contained in the staff report or request a continuance to a future meeting. The City Council may ask questions for clarification. Once the Public Hearing is opened, the applicant/property owner and the appellant is entitled to present the application/project/matter in person or through a representative. Following this presentation, members of the public shall be called upon to speak on the application/project/matter in the order their Request to Speak forms are received by the City Clerk or Deputy City Clerk. Once the members of the public have spoken, the applicant/property owner and the appellant shall be provided an opportunity to rebut any testimony or evidence provided by opponents or by staff. The rebuttal shall be limited to answering or refuting testimony of the public or staff. Following each presentation, members of the City Council may question the speakers. Following rebuttal, the item is then before the City Council for discussion and clarification.

When all parties have been heard and there are no additional requests to speak, the Mayor may close the Public Hearing and any member of the Council may make a motion to:

(1) Reopen the Public Hearing and continue it to a date certain to allow for further study or discussion; or

(2) Adopt the resolution or ordinance for approval or denial of the project, with or without changes, as recommended in the Staff Report; or

(3) Direct Staff to prepare a different resolution or ordinance than the one recommended for adoption on the Consent Calendar at the next regular meeting of the City Council.

The applicant may withdraw the application/project/matter at any time before a vote is taken by the City Council. An appellant may withdraw its appeal at any time prior to the opening of the public hearing.

Speaker Time Limits for Public Hearings

At Public Hearings involving land use matters the property owner or the applicant/property owner has the burden of proof and, therefore, shall be allowed fifteen (15) minutes for an initial presentation by its development team and an additional ten (10) minutes for rebuttal by its development team following the other comments on the matter. The Mayor may allow more time if required to provide due process for the property owner or applicant. An appellant, other than the property owner or applicant, and the spokesperson for an organized group of residents residing within the noticed area of the property which is the subject of the Public Hearing, shall be allowed fifteen (15) minutes to present the appellant's position to the Council. The Mayor may allow more time if required to provide due process for the appellant. All other members of the public may speak during the Public Hearing for a maximum period five (5) minutes each. Deferral of one speaker's time to another is not permitted. In the event there is a large number of speakers, the Mayor may reduce the maximum time limit for members of the public to speak.

Policy Applicable to All Public Meetings of the City. The above-referenced public participation standards of this Policy shall apply to all public meetings of the City including City Council and all commissions, boards and committees of the City.

POLICY NO. 7

AGENDA PLACEMENT BY COUNCIL MEMBERS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Agenda Placement by Council Members**
Policy No.	**7**
Approved:	**September 28, 2021**
Revised:	**March 14, 2023**

PURPOSE:

While most agenda items are scheduled through the City Manager's Office based on the administrative and operational needs of the City, the purpose of this City Council policy is to provide for an effective and efficient process through which an individual Council Member may place an item on the agenda.

POLICY:

Request for Placement. Any Council Member, including the Mayor, may request that an item be placed on a future agenda. The Council Member's request will be considered by the City Council under the "Items for Future City Council Agendas" section of the agenda. In making the request, a Council Member may briefly describe the topic of the proposed agenda item and any timing associated with the placement of the item on the agenda. The Council Members description of the requested future agenda item shall not exceed three (3) minutes unless extended by a majority vote of the City Council. No substantive discussion on the subject to be placed on a future agenda of the motion may occur except to explain the general nature of the item and the issue of timing for its placement on a future agenda. While a member of the public may express a desire to place an item on the agenda for consideration, items may only be placed on the agenda by Council Members pursuant to this policy or by the City Manager based on administrative or operational needs of the City.

Response to Request for Placement. In response to such a request to place an item on the agenda by an individual Council Member, the City Council by a majority vote may choose to do any of the following:

(1) Refer the item to the City Manager with specific direction to place the item on the agenda, conduct additional research and/or obtain additional information to report back to the City Council, and/or any other specific direction that the City Council deems appropriate.
(2) Refer the item to the City Council subcommittee most related to the subject matter of the request for additional review and consideration. The relevant Council subcommittee after consideration may place the item on an agenda at their request and/or report back the findings of their consideration at a Council meeting under the "City Council Reports" section of an agenda. At the direction of the subcommittee, the City Manager may also share the general findings in writing as an update to the full City Council.
(3) Take no action. Absent a majority vote of the City Council to refer an item pursuant to (1) and (2) above, the proposed item shall not be placed on a future agenda.

Motion Required. If a motion to refer an item pursuant to (1) and (2) above is made, seconded and approved by a majority vote of the City Council, the proposed item will be processed accordingly through the City Manager. If there is no second, or the motion fails for the lack of a majority, no subsequent action shall be taken on the request.

Time for Discussion and Public Comment

Public comments on the placement of these agenda items shall be limited to a maximum of 30 minutes. Individual comments shall not exceed three (3) minutes. General discussion amongst the City Council on the placement of agenda items listed under the "Items for Future City Council Agendas" section of the agenda shall be limited to 15 minutes.

Timing Direction. If the motion provides specific direction regarding timing, the approved item will be referred and/or placed on a future agenda consistent with that direction. If the motion is silent regarding timing, the approved item will be placed on a future agenda at the earliest reasonable time as determined by the City Manager.

Recurring Requests. Requests by Council Members to add the same agenda item to every subsequent agenda are not permitted. An item may not be reconsidered for placement for a minimum of three (3) months unless approved by a majority vote of the City Council.

POLICY NO. 8

REQUEST FOR INFORMATION AND STAFF TIME

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Requests for Information and Staff Time**
Policy No.	**8**
Approved:	**September 28, 2021**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to ensure the effective use of staff time to fulfill individual City Council Member requests in balance with implementing the direction of the full City Council.

POLICY:

1. General. Unless circumstances warrant otherwise, communications with staff should occur during normal City business hours. Responses to inquiries and questions should be expected within the next business day where possible.

2. Routine Requests for Information. Council Members may contact Executive Department Directors directly for information made readily available to the general public on a regular basis. Routine requests to provide information that can be fulfilled within a nominal period of time (i.e., status of a resident request, legislation, project timing, copy of existing documents, etc.) will be provided as soon as practicable. Staff shall treat all Council Members the same without preferential treatment and advise the City Manager of information provided as needed.

3. Non-Routine Requests for Information. Non-routine requests are defined as requests for information that exceed four (4) hours or one-half of a regular business day, as determined by the City Manager, to compile, research, prepare, etc.. Non-routine requests shall require the approval of the majority of the City Council. Non-routine requests may be placed on the agenda by the City Manager as an administrative or operational item under the Consent Calendar or Business section of the agenda to obtain such approval. The responsive information to non-routine requests will be distributed to the full City Council by way of written notification, as a future agenda item, or such other manner as determined by the City Manager. The City Manager retains the ability to bring any item to the full City Council irrespective of time constraints. The City Manager also retains the ability in the aggregate to perform work in response to individual City Council Member requests based on overall time and resource allocation.

4. Meeting Requests. Any Council Member requests for meetings with staff must be directed through the City Manager and/or relevant Executive Department Director, as appropriate.

POLICY NO. 9

PUBLIC RECOGNITIONS POLICY

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Public Recognitions Policy**
Policy No.	**9**
Approved:	**January 10, 2023**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to ensure an effective and efficient process for the consideration and conduct of various public recognitions by the City Council.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Public Recognitions Ad Hoc Subcommittee

A subcommittee shall be appointed annually as part of the City Council subcommittee review and selection process in January. To the extent possible, the subcommittee shall include both short and long tenured members of the City Council. The subcommittee will consider all public recognitions that include a nomination component (Community Leader Award of Distinction, Council Member Award of Recognition Upon Retirement, Wall of Honor, and Memorial, Monument and/or Facility Naming). The subcommittee will consider all nominations in a calendar year together and make recommendations to the full City Council. The subcommittee will function similarly to other ad hoc subcommittees that consider items on a calendar year basis.

Standard Certificates of Recognition

Standard certificates of recognition may be provided at the request of City residents, community leaders, businesses, nonprofit organizations, and/or Council Members. Standard certificates shall include those designated in the chart below. Such certificates shall be presented on behalf of the City of Temecula and shall be signed by a single signatory in the following order: (1) Council Member attending a related event, (2) Mayor, (3) Mayor Pro Tempore, or (4) Council Member designated by the Mayor.

1	Certificate of Achievement	Student of the Month, Student of the Year, Girl Scouts, Eagle Scouts, Student Sports and Competitions, Youth in Government	Common / Monthly
2	Certificate of Appreciation	Former Board and Commission Members, Meeting Entertainment	Common
3	Certificate of Commendation	Acts of Bravery, Heroism (Resident Assistance in Emergency Circumstances), Veterans	Rare

4	Certificate of Congratulations	25th/50th/75th/100th Birthdays, Wedding Anniversaries, Retirements	Rare
5	Certificate for Grand Opening / Ribbon Cutting	New Businesses / New Owners / Chamber of Commerce (Economic Development Requests)	Common
6	Certificates of Recognition	Miscellaneous – Noteworthy Residents, Non-Profits, Foundations, Chamber Gala	Common
7	Certificate of Remembrance	In Memoria, Adjournments	Rare
8	Certificate of Welcome	Sister City Dignitaries	Rare

Proclamations

Proclamations may be provided at the request of residents, businesses, nonprofit organizations and/or Council Members. The City Council shall approve annually a list of proclamations proposed to be issued for the calendar year. Unless three or more Council Members pull a proclamation from the list indicating exclusion, all proclamations on the annual list shall be issued for presentation via mail or in-person as requested. Proclamations shall be presented on behalf of the City of Temecula and shall be signed by a single signatory in the following order: (1) Mayor, (2) Mayor Pro Tempore, or (3) Council Member designated by the Mayor.

1	Proclamation	Day, Week or Month of Observation Consistent with Regional, State and/or National Recognition for Public Awareness / Education Purposes	Common
2	Proclamation – Person	Recognition of Day in Celebration of a Person (Council Member, Founding Member)	Rare

Pins and Medals

Pins and medals may be provided at the request of residents, businesses, nonprofit organizations and/or Council Members. Pins and medals shall include those designated in the chart below. Pins and medals shall be accompanied by a related certificate and shall be presented via mail or in-person as requested. Pins and medals shall be presented on behalf of the City of Temecula and any related certificate shall be signed by a single signatory in the following order: (1) Mayor, (2) Mayor Pro Tempore, or (3) Council Member designated by the Mayor.

1	Boy Scout / Girl Scout	Eagle Scout, Bronze/Silver/Gold Award, or Similar Noteworthy Accomplishment	Common
2	Hero's Medal and Pin	Acts of bravery and courage in the service of others	Rare

Community Leader Award of Distinction

A Community Leader Award of Distinction may be provided to a resident and/or nonprofit or business affiliate upon recommendation of the Public Recognitions Subcommittee. Such award is rare and therefore shall be presented on behalf of the City of Temecula in-person at a City Council meeting. Any

related certificate shall be signed by all Council Members. To be eligible for such an award, a nominee must meet the following criteria:

Criteria

1. Nomination Form – The requisite nomination form, with supporting documentation, is submitted to the City Clerk's Office pursuant to instructions by the relevant deadline.
2. Contributions – The contributions and proof of impact of the nominee, as illustrated in the nomination packet, are well known and recognized by a significant segment of the community and their respective industry (education, nonprofit, business).
3. Subcommittee Consideration – The nominee received a recommendation for recognition by the full City Council from the Public Recognitions Ad Hoc Subcommittee.
4. Public Recognition – During an in-person recognition at a City Council meeting, the nominee will receive a framed award signed by all Council Members, a swag bag from the City, and other recognitions from the community/industry as they deem appropriate.

Council Member Award of Recognition Upon Retirement

A Council Member Award of Recognition Upon Retirement shall be provided to retiring Council Members as indicated below. Such recognition is rare and therefore shall be presented on behalf of the City of Temecula in-person at a City Council meeting. Any related certificate shall be signed by all Council Members. To be eligible for such an award, a nominee must meet the following criteria:

Criteria

1. Internal Form – The requisite recognition form, with supporting documentation, is submitted by relevant staff to the City Clerk's Office pursuant to instructions by the relevant deadline.
2. Service – The subject Council Member has completed a minimum of one full-term if elected or the whole of an unexpired term if appointed.
3. Subcommittee Consideration – The subject Council Member received a recommendation for recognition by the full City Council from the Public Recognitions Ad Hoc Subcommittee.
4. Public Recognition – The subject Council Member receives recognition based on tenure with optional community recognitions at th meeting. While Board and Commission service is noted as part of the presentation, it is not counted towards years of service for purposes of recognition categories below:

A. One Term (4 Years) – The subject Council Member receives an engraved plaque with years of service, a commemorative street sign, and a swag bag from the City.
B. Two – Three Terms (8-12 Years) – The subject Council Member receives an engraved plaque with years of service, a framed proclamation recognizing member's retirement date as Member's Day, a commemorative street sign, and a swag bag from the City.
C. Four Terms and Beyond (16+ Years) – The subject Council Member receives a shadow box with a key to the City, a proclamation recognizing member's retirement date as Member's Day, a commemorative street sign, and a swag bag from the City.

Wall of Honor

A Wall of Honor recognition may be provided to any deserving individual (i.e., resident, service club member, former Council Member, Commissioner or staff, nonprofit or business affiliate, etc.) upon recommendation of the Public Recognitions Subcommittee. Such recognition is rare and therefore shall be presented on behalf of the City of Temecula in-person at a City Council meeting. Any related certificate

shall be signed by all Council Members. To be eligible for such a recognition, a nominee must meet the following criteria:

Criteria

1. Nomination Form – The requisite nomination form, with supporting documentation, is submitted to the City Clerk's Office pursuant to instructions by the relevant deadline.
2. Contributions – The contributions and proof of impact of the nominee, as illustrated in the nomination packet, have extended beyond a 10 year period of time, are well known, and recognized by a significant segment of the community and/or their respective industry (education, nonprofit, business).
3. Subcommittee Consideration – The nominee received a recommendation for recognition by the full City Council from the Public Recognitions Ad Hoc Subcommittee.
4. Public Recognition – During an in-person recognition at a City Council meeting, the nominee will receive a framed award signed by all Council Members and the nominee's name will be incorporated into the perpetual Wall of Honor plaque located at City Hall.

Memorial, Monument and/or Facility Naming

A memorial, monument and/or facility naming recognition may be provided to any deserving individual (i.e., resident, service club member, former Council Member, Commissioner or staff, nonprofit or business affiliate, etc.) upon recommendation of the Public Recognitions Subcommittee. Such recognition is rare and therefore shall be presented on behalf of the City of Temecula in-person at the site of the thing and/or place to be named. Any related certificate shall be signed by all Council Members. To be eligible for such a recognition, a nominee must meet the following criteria:

Criteria

1. Nomination Form – The requisite nomination form, with supporting documentation, is submitted to the City Clerk's Office pursuant to instructions by the relevant deadline.
2. Contributions – The contributions and proof of impact of the nominee, as illustrated in the nomination packet, have extended beyond a 20 year period of time, are well known, and recognized by a significant segment of the community and/or their respective industry (education, nonprofit, business). Such contributions exceed all other contributions in community value such that there is no other public recognition that can be applied.The 20 year period of time is subject to review and adjustment by the full City Council.
3. Subcommittee Consideration – The nominee received a recommendation for recognition by the full City Council from the Public Recognitions Ad Hoc Subcommittee.
4. Public Recognition – During an in-person recognition, the nominee will receive a framed award signed by all Council Members and the nominee's name will be incorporated into the subject memorial, monument and/or facility.

Miscellaneous

The following non-standard recognitions shall not have a political, religious, lifestyle, and/or commercial association: Community Leader Award of Distinction, Wall of Honor, Memorial, Monument, and/or Facility Naming. In addition, Resolutions of Principle, defined as statements in which an organization describes its collective beliefs, values, and intentions towards a particular topic(s), will not be issued by the Council and are not included as a part of this policy.

POLICY NO. 10

USE OF CITY LETTERHEAD AND SEAL

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Use of City Letterhead and Seal**
Policy No.	**10**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth clear guidelines for the use of City letterhead and seal for official City business. The use of City letterhead and seal for any other purpose is prohibited.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

City Letterhead
City letterhead shall be used to convey official City business. Council Member correspondence written on City letterhead may reflect a majority position of the Council and/or an individual Council Member's position. For example, City letterhead may be used to convey a collective position of the City Council on legislation, signed by the Mayor on behalf of the City Council. In addition, an individual Council Member, under their individual signature, may use City letterhead to support and/or oppose legislation. Any use of City letterhead shall clearly reference whether the correspondence is being sent on behalf of the members collectively or an individual member. All Council Member correspondence using City resources shall be copied to the full Council.

City Seal
Pursuant to Government Code Section 40811 the City Clerk is the custodian of the City Seal. Temecula Municipal Code Section 1.12.020 states "The city clerk shall have custody and charge of the City Seal and such other insignia that may from time to time be adopted pursuant to this code. Except as provided by this code, any seal, insignia or other symbol officially adopted for use by the City shall not be affixed to any instrument without the special warrant of the City Clerk therefore." Use of the City Seal is limited to official City business (i.e., official documents) and representation of the City as a whole. Individual use of the City Seal is prohibited.

POLICY NO. 11

COMPLIMENTARY TICKET USE AND REPORTING

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Complimentary Ticket Use and Reporting**
Policy No.	**11**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth the use and reporting requirements affiliated with a complimentary ticket policy. The Political Reform Act, codified in the California Government Code, requires City officials and those employees designated in the City' s conflict of interest code to report gifts valued at $50 or more on their Statement of Economic Interests (Form 700). The regulating agency is the Fair Political Practices Commission (FPPC). FPPC Regulation 18944.1 provides that a ticket or pass provided to such persons by the City and distributed and used in accordance with an adopted written policy that meets the requirements of Regulation 18944.1 is not a gift under the Political Reform Act. The City adopted a Complimentary Ticket Policy in January 2009 and amended it in January 2016 and December 2019.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is attached as Exhibit A.

EXHIBIT A

POLICY

EXHIBIT A

RESOLUTION NO. 19-72

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA UPDATING THE CITY'S COMPLIMENTARY TICKET POLICY

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council finds and determines as follows:

A. The Political Reform Act requires City officials and those employees designated in the City's conflict of interest code to report gifts valued at $50 or more on their Form 700. FPPC Regulation 18944.1 provides that a ticket or pass provided to such persons by the City and distributed and used in accordance with an adopted written policy that meets the requirements of Regulation 18944.1 is not a gift under the Political Reform Act.

B. The City adopted a Complimentary Ticket Policy in January 2009 and amended it in January 2016. The City must again amend the Complimentary Ticket Policy in order to update it to comply with revised FPPC Regulations.

Section 2. The City Council hereby approves the "Complimentary Ticket Policy," attached hereto as Exhibit A, that amends and restates the Policy. The Complimentary Ticket Policy approved by this Resolution supersedes all previous versions of the policy.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 10th day of December, 2019.

Michael S. Naggar, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Resolution No. 19-72 was duly and regularly adopted by the City Council of the City of Temecula at a meeting thereof held on the 10th day of December, 2019, by the following vote:

AYES:	5	COUNCIL MEMBERS:	Edwards, Rahn, Schwank, Stewart, Naggar
NOES:	0	COUNCIL MEMBERS:	None
ABSTAIN:	0	COUNCIL MEMBERS:	None
ABSENT:	0	COUNCIL MEMBERS:	None

Randi Johl, City Clerk

CITY OF TEMECULA

COMPLIMENTARY TICKET POLICY

1. Purpose. This policy governs the distribution of complimentary tickets or passes received by the City, or at the behest of a City Official or City Employee, to a facility, event, show or performance for entertainment, amusement, recreational or similar purposes (the "Event"). Many of the rental agreements for the various musical and theatrical performances taking place at the Old Town Temecula Community Theater or other City-owned venues ("City Venues") require that booking entities provide a limited number of complimentary tickets to the City for performances. Additionally, the City is a sponsor of many other events in the community providing funds for the event or in-kind services to support the event ("City Sponsored Events"). The organizers of these specific events and other events within the City and County often provide the City with complimentary tickets to the event. The purpose of this Policy is to establish a fair and equitable process for the distribution of complimentary tickets to the City in compliance with the requirements of Section 18944.1 of the Fair Political Practices Commission Regulations. This Policy is subject to all applicable FPPC Regulations and the Political Reform Act, as now exist or may hereafter be added or amended, including, without limitation, definitions. (These regulations can be found at Title 2 of the California Code of Regulations and will be referred to as "FPPC Regulation").

2. Distribution of Complimentary Tickets by the City. The City shall have sole discretion to determine who shall receive the complimentary tickets for Events that are provided to the City.

A. The City Manager may provide two (2) complimentary tickets for each City Council Member and Commission Members ("City Officials") for an Event. An Event shall only include one performance during each engagement at the City Venues or for the City-Sponsored Event or other Event. "Commission Members" shall mean members of the Planning Commission, Community Services Commission, Public/Traffic Safety Commission, and Old Town Local Review Board, and other commissions or boards established by the City Council.

1) The tickets shall be used by the City Official, his or her immediate family or no more than one guest solely for their personal use. The City Official receiving complimentary tickets shall not transfer a ticket to any other person, except to members of the City Official's immediate family or no more than one guest solely for their attendance at the Event.

2) The public and governmental purpose of providing the complimentary tickets to City Officials for an Event is to enable them to advertise and promote the City of Temecula, to monitor and evaluate the City Venues and the quality of performances and to monitor and evaluate the value of the City-Sponsored Event to the City and their compliance with City policies, agreements and other requirements.

3) City Officials may purchase at face value additional tickets to performances at the City Venues or to the City Sponsored Event, but no more than two complimentary tickets or passes will be provided as described in this Section.

4) If complimentary tickets are provided to a City Official for an Event at which the City Official performs a ceremonial role, the ticket is not a gift but shall be reported as provided in this Policy.

B. The City Manager may distribute two (2) complimentary tickets for a performance at a City Venue or a City Sponsored Event or other Event to a City Employee on an equitable basis. The tickets shall be used by the City Employee, the City Employee's immediate family or no more than one guest solely for their personal use.

1) The City Employee receiving the complimentary tickets shall not transfer the complimentary tickets, except to members of the City Employee's immediate family or no more than one guest solely for their attendance at the Event.

2) The purpose of providing the complimentary tickets to a City Employee is to enable the employee to advertise and promote the City of Temecula, to monitor and evaluate the City Venues and the quality of performances, evaluate the value of the City-Sponsored Event to the City and its compliance with City policies, agreements and other requirements, and to enhance employee morale.

C. The City Manager may distribute complimentary tickets for an Event to non-profit community service groups who have received or are eligible for Community Service funding from the City.

D. The City Manager may distribute complimentary tickets for an Event to persons participating in recreational, educational or cultural programs administered by the City or for other lawful purposes; provided, however, that complimentary tickets shall only be distributed to City Officials and City employees, their immediate family or no more than one guest in accordance with this Policy.

E. Complimentary tickets to Events shall be distributed to City Officials and City Employees under procedures designated by the City Manager, provided the manner of distribution conforms to this Policy and can be documented and reported as required by this Policy.

F. Any complimentary tickets for City Venues which are not distributed under this Policy may be sold by the City to the public.

G. Complimentary tickets distributed to those persons described in this Policy shall not be transferred except as provided in this Policy and shall not be sold.

H. If the public purpose cited for the use of tickets involves the oversight or inspection of facilities, the City Official or City Employee must document the public purpose by submitting a written inspection report of findings and recommendations to be provided to the City Clerk.

I. The disproportionate use of tickets or passes by a City Official, City Manager, or a member of the Executive Staff is prohibited.

J. The attendance of a City Employee at an Event for the purpose of carrying out the employee's job duties or for the purpose of providing services on behalf of the City for the Event,

shall not be deemed to be the distribution of a complimentary ticket and does not need to be reported as otherwise provided in this Policy.

K. Except for the provisions outlined in this Policy, this Policy shall in no way restrict or prohibit the Staff at the Old Town Temecula Community Theater from issuing complimentary tickets in compliance with the normal and customary business practices associated with promoting theatrical events and concerts to the general public. The public and governmental purposes of providing these complimentary tickets is to promote and advertise the City of Temecula and, particularly the Old Town Temecula Community Theater, to the public and the entertainment community and to develop quality entertainment for the Theater.

3. Complimentary Tickets Under this Policy Not Subject to Gift Regulations; Other Benefits Could Be Gifts.

A. The distribution of complimentary tickets pursuant to this Policy shall not constitute a "gift" to a City Official or City Employee pursuant to the terms of FPPC Regulation 18940; provided, however, that other benefits, such as food or beverage or other gifts provided to an official that are not part of the admission provided to all members of the public with the same class of ticket, will need to be accounted and reported for as gifts.

B. If the City receives complimentary tickets that are earmarked for particular City Official or City Employee, then the tickets are considered gifts to that City Official or City Employee. If these tickets not returned or donated, unused, to the provider, or if the City Official or City Employee does not reimburse the donor the full value of a ticket, within thirty (30) days of receipt, then the official must comply with the applicable FPPC gift limit regulations and reporting regulations.

4. Reporting of Complimentary Tickets. The distribution of the tickets and the use of any passes pursuant to this Policy shall be documented by the preparation and certification of the Fair Political Practices Commission Form 802. Within thirty (30) calendar days of the distribution of a ticket or the use of a pass the City Clerk, or his or her designee, shall prepare and certify Form 802, forward the Form 802 to the FPPC for posting on the FPPC's website, maintain the Form 802 as a public record and post it on the City's Website. This Policy shall be posted on the City website in a prominent fashion.

5. Complimentary Tickets to Political, Non-Profit and 501(c)(3) Organization Fundraisers. The reporting requirements for complimentary tickets to political, non-profit and 501(c)(3) organization fundraising events are governed by FPPC Regulation 18946.4 and the City has no jurisdiction to modify the reporting requirements. These complimentary tickets are referenced in this Policy as a convenience to persons seeking information concern distribution of complimentary tickets.

A. Pursuant to FPPC Regulation 18946.4, all complimentary tickets provided directly to a City Official or City Employee to political, non-profit or 501(c)(3) organization fundraising events are reportable as gifts on an official's Economic Disclosure Form 700 and are subject to the annual gift limit set forth in FPPC Regulation 18940.2 unless one of the following narrow exceptions applies:

- A City Official or City Employee may receive two complimentary tickets from a 501(c)(3) charitable organization to its fundraising event that shall be deemed to have no value. The official must make sure that the charity is a valid Internal Revenue Service 501(c)(3) organization because not all "non-profit organizations" are 501(c)(3) organizations. Also, additional complimentary tickets or admissions by invitations, or a gift of a ticket or tickets to a 501(c)(3) charitable organization's fundraising event to a City Official or City Employee from a third party other than the 501(c)(3) charitable organization, are gifts to the City Official or City Employee subject to the gift limit and reportable on Form 700.

- A City Official or City Employee may receive two complimentary tickets to a political fundraising event for a political committee as defined in Government Code Section 82013(a), or a comparable committee regulated under federal law or the laws of another state holding an event in California, that shall be deemed to have no value. Also, additional complimentary tickets or admissions by invitations, or a gift of a ticket or tickets to a political committee or candidate's fundraising event to an official from a third party other than the committee or candidate sponsoring it, are gifts to the official subject to the gift limit and reportable on Form 700.

B. FPPC Regulation 18946.4 contains detailed regulations concerning the calculation of the value of tickets to political and non-profit fundraisers when such tickets must be reported.

C. Complimentary tickets to a fundraising event for non-profit organizations donated to the City without designation of who should attend will be distributed as otherwise provided in this Policy.

6. Effective Date. This Policy shall be effective on the effective date of Resolution No. 19-72.

This Complimentary Ticket Policy was approved by Resolution No. 19-72 of the City Council on December 10, 2019.

Randi John, City Clerk

POLICY NO. 12

USE OF SYSTEMS, ELECTRONIC COMMUNICATIONS AND TECHNOLOGY RESOURCES

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Use of Systems, Electronic Communications and Technology Resources**
Policy No.	**12**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth certain expectations for the use of City systems, electronic communications and/or technology resources, regardless of whether the electronic communications and/or technology resources are owned or maintained by the City, to conduct City business. In utilizing systems, electronic communications and/or technology resources, all users are expected to share the obligation of safeguarding and maintaining the City's information and adhering to the relevant policy.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is attached as Exhibit A.

EXHIBIT A

POLICY

CITY OF TEMECULA

INFORMATION TECHNOLOGY &
SUPPORT SERVICES DEPARTMENT

MEMORANDUM

TO: Aaron Adams, City Manager

FROM: Michael K Heslin, Director of ITSS

DATE: June 13, 2023

SUBJECT: Policy Update Approval – User Technology Resources Policy

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The attached User Technology Resources Policy is an update to the previously approved Employee Technology Resources Policy on October 30, 2023.

The User Technology Resources Policy includes all definitions of communications (including email and text messaging) and Appropriate Use of Electronic Mail, Retention, and Responsibility of City Officials/Employees. City Attorney's Office has revised this policy to combine all facets of users and technology use into this policy where applicable. This update now combines employees, elected officials and other consultants into one policy and addresses use of personal technology.

Attached is the updated User Technology Resources Policy dated June 13, 2023, that will supersede all other Employee Technology Resources Policies. Attached is the marked-up version for your reference.

Please call me with any questions you may have.

Thank you

R:/memos

CITY OF TEMECULA
INFORMATION TECHNOLOGY
& SUPPORT SERVICES

USER TECHNOLOGY RESOURCES POLICY

DATE: June 13, 2023

DEPARTMENT APPROVAL: _____ 6/13/2023
Department Director Signature — Date

CITY MANAGER APPROVAL: _____ 6/14/23
City Manager Signature — Date

PURPOSE:

All Users who access City systems or use any Electronic Communications or Technology Resources, regardless of whether the Electronic Communications or Technology Resources are owned or maintained by the City, to conduct City Business are expected to share the obligation for safeguarding and maintaining the City's information, as outlined in the following policy. If a User needs clarification on any of the terms of this Policy, the User should contact the ITSS Department.

SCOPE:

This Policy applies to all Users including those Users affiliated with third parties who access City Technology Resources or Electronic Communications or use any personal or commercial Technology Resources or create Electronic Communications to conduct City Business.

Table of Contents

1 Confidentiality

Material contained in this document is property of the City of Temecula. This document should not be disclosed outside of the City without specific approval from the ITSS Director, and should not be duplicated, used or disclosed for any purpose other than that for which it was intended.

2 Definitions

2.1 "User" means all City employees, elected and appointed City officials, members of City commissions and advisory boards, and City consultants and other non-employees utilizing Electronic Communications or Technology Resources for the purpose of conducting City Business, regardless of the User's location when accessing any Electronic Communications or Technology Resource.

2.2 "City" shall mean any entity controlled by the City Council, including but not limited to Temecula Community Services District, Public Financing Authority, Temecula Housing Authority or Successor Agency to the Temecula Redevelopment Agency.

2.3 "City Business" is broadly defined to mean those activities or other business, related to the City and its jurisdiction, functions, programs, operations, regulations or regulatory activities, or events relating to the City, or that contain information used by its officials, employees and consultants for the accomplishment of City-related tasks, or are related to the operation of the City, with the exception of limited incidental uses as described in Section 4.2.

2.4 "Electronic Communications" includes emails, text messages, voicemails, social media and blog posts, and any other electronic communications, including those developed or implemented in the future, transmitting or maintaining messages, documents, images or other writings via Technology Resources.

2.5 "Public Records" include any "writing" (as broadly defined below) containing information relating to the conduct of the City's business that is prepared, owned, used, or retained by the City, regardless of the physical form and characteristics. Public Records specifically include any recorded and retained communications regarding City Business sent or received by a User through commercial or personal Technology Resources or other Technology Resources not owned by the City or connected to a City computer network. Public Records do not have to be written but may be in another format that contains information such as computer tape or disc, video or audio recording, or email or text message. Public Records are further defined in Section 4.2.2.

2.6 "Public Records Request" is a request for Public Records made under the Public Records Act or subpoena duces tecum or discovery request addressed to the City or a User.

2.7 "Technology Resources" includes all electronic media and storage devices, software, and means of electronic communication including any of the following: personal computers and workstations; laptop computers; mini and mainframe computers; tablets; computer hardware such as disk drives, tape drives, external hard drives and flash/thumb drives; peripheral equipment such as printers, modems, fax machines, and copiers; computer software applications and associated files and data, including software that grants access to external services, such as the Internet or cloud storage accounts; electronic mail (or email); telephones; mobile phones; smart phones; personal organizers and other handheld devices; and instant messaging and text systems. Technology Resources is also intended to broadly include new or emerging devices, technology, software and

means of communications that may be developed or implemented in the future.

3 Introduction

This Policy applies to all Users. Users are responsible for complying with this and all other City policies defining computer and network security measures.

It is City Policy that all information created, stored, processed, transmitted or printed by or on behalf of the City is and shall remain City property.

All Users who access or make decisions affecting City information play a role in protecting that information. Accordingly, it is expected that all Users share the obligation to safeguard and maintain the City's information.

All Users are expected to protect the information assets with which they have been entrusted from unauthorized, deliberate, or accidental:

- Access,
- Use,
- Modification,
- Destruction,
- Disclosure, or
- Possession.

This document defines City standards and guidelines for the protection of the availability, integrity and confidentiality of the City's Technology Resources and any Electronic Communications stored or transmitted in the furtherance of City Business, regardless of whether on City Technology Resources or other Technology Resources.

4 Conditions of Use of City Technology Resources

All Users utilizing City Technology Resources must respect the integrity of all security controls and abide by all implemented security measures, as well as adhere to all end-user license and contractual agreements associated with City Technology Resources.

1. The City reserves the right to limit permanently or restrict any User's usage of the City Technology Resources. The City reserves the rights to copy, remove or otherwise alter any information or system that may undermine the authorized use of the City Technology Resources. The City may do so with or without notice to the User in order to protect the integrity of the City Technology Resources against unauthorized or improper use, and to protect authorized Users from the effects of unauthorized or improper usage.
2. The City, through authorized individuals or entities, reserves the right periodically to check and monitor City Technology Resources, and reserves any and all other rights necessary to protect them.
3. The City disclaims responsibility and will not be responsible for loss or disclosure of User information or interference with User information resulting from its efforts to maintain the privacy, security and integrity of City Technology Resources and information.

4. The City reserves the right to take emergency action to safeguard the integrity and security of City Technology Resources and information. This includes, but is not limited to, termination of a program, job, or on-line session, or temporary alteration of User account names and passwords. The taking of emergency action does not waive the rights of the City to take additional actions under this Policy.
5. Users utilizing City Technology Resources do so subject to applicable laws and City policies. The City disclaims any responsibility and/or warranties for information and materials residing on non-company computer systems or available over publicly accessible networks, except where such responsibility is formally expressed. Such materials do not necessarily reflect the attitudes, opinions or values of the City or its employees.
6. A Department Director may recommend disciplinary action if after appropriate investigation an employee is found to be in willful violation of any City Policy. Other Users may lose access to City Technology Resources. Acts that may lead to discipline or loss of access include, but are not limited to:
    - Willful physical damage to any City Technology Resources;
    - Obtaining confidential information improperly;
    - Deliberate destruction of information;
    - Intentional interruption of normal services provided by the City Technology Resources;
    - Infringement of any patent or the breach of any copyright;
    - Gaining or attempting to gain unauthorized access to accounts and passwords;
    - Gaining or attempting to gain access to restricted areas without the permission of the appropriate authority; or
    - Inappropriate use of City Technology Resources.

4.1 Code of Conduct in the Use of City Technology Resources

It is City Policy that all Users who use, have access to, or are responsible for any City Technology Resources must recognize and comply with City's "Code of Conduct." Employees violating this Code of Conduct may be subject to disciplinary action, up to and including termination of employment, and legal action. All Users who violate this Code of Conduct may lose access to City Technology Resources.

4.1.1 Introduction

Standards for the use of City Technology Resources derive directly from standards of common sense and common decency that apply to the use of any shared resource. The City depends on a spirit of mutual respect and cooperation to resolve differences and resolve problems that arise from time to time. This Code of Conduct is published in that spirit. Its purpose is to specify User responsibilities and to promote the appropriate use of City Technology Resources for the protection of the City.

4.1.2 Responsibilities

All Users who access or make decisions affecting City information play a role in protecting that information. Accordingly, all users of any City Technology Resources must accept specific responsibilities for the security and confidentiality of the City's information. The following description of City network drives will better organize your documents and minimize the opportunity for losing files.

- 'V' Drive: This is your 'my documents' directory-for draft documents or confidential information. No other User is able to access this directory
- 'P' Drive: This is a Global Directory used for quick transfer of non-confidential files. All network Users have access and may copy, delete, and modify all files. Due to this, it is recommended that you use this directory with caution. ITSS will not restore documents lost or deleted from this directory.
- 'R' Drive: This is your department directory. Only members of your department have access to this directory. It is recommended that files that are shared by others within your department be stored here.
- 'C' Drive: This is your local hard drive on your desktop. City policy requires all data to be stored on the above network drives. Local hard drives are not backed up and will not be recovered in the event of data loss.

4.1.2.1 Disclosure and Disclaimer Statement

All intellectual and proprietary property rights, including copyrights and rights to service marks and trademarks, as to any and all text, material, images and/or content appearing on or accessible through the City websites, belong to their respective owners. Notwithstanding the foregoing, the City owns all intellectual and proprietary property rights, including copyrights and rights to service marks and trademarks, as to the City Seal, all City logos, symbols, emblems, and any and all other images, designs, content and materials created by or on behalf of the City that appear on or are accessible through the City websites.

Any use of any of the City-owned materials, images or other content accessible through, or appearing or stored on the City Technology Resources or City's websites is prohibited without the written permission of the City Manager. The following acts or activities are prohibited without prior, written permission from the City Manager: 1) modification and/or re-use of text, images or other content from a City server; 2) distribution of the City's web content; or 3) "mirroring" of the City's information, materials or data on a non-City server.

4.1.2.2 Security

City Policy uses access controls and other security measures to protect the confidentiality, integrity and availability of the information handled by City Technology Resources. All Users are responsible to insure the security of City Technology Resources by implementing procedures to:

- Safeguard their data, personal information, passwords and authorization codes, and confidential data;

- Take full advantage of file security mechanisms built into the City Technology Resources;
- Choose their passwords wisely and to change them as required; and
- Follow the security policies and procedures established to control access to administrative data.

4.1.2.3 Confidentiality

All Users using City Technology Resources must comply with all City Policies for the maintenance of confidentiality.

1. Users have an obligation to respect the privacy of other individuals and refrain from:
    - Intentionally seeking information on, obtaining copies of, or modifying files, tapes, or passwords belonging to other individuals or to the City;
    - Representing others, unless authorized to do so explicitly by those individuals; or
    - Divulging sensitive personal data to which they have access concerning staff, customers, vendors or other individuals without explicit authorization to do so.
2. Users are responsible for reporting any information concerning instances in which City Policies or any City standards or Codes of Conduct has been or are being violated. In general, reports about violations should be directed initially to the ITSS Director and/or Human Resource Director.
3. Printers used to produce confidential information should be monitored while printing.
4. Confidential files must be overwritten on fixed disks, tapes, or cartridges.

4.1.3 Inappropriate Activities

All information stored and processed on City Technology Resources and networks is City property and subject to inspection without notice. Non-compliance with City Policy on restricted activities will not be tolerated. Violating employees are subject to disciplinary action, up to and including termination of employment, and all Users, including employees, are subject to loss of access to City Technology Resources and/or legal action.

The following are intended to illustrate some examples of unacceptable actions rather than to exhaustively list every specific behavior that may violate the City Policies. Accordingly, disciplinary or other legal action may occur after other actions if the circumstances so warrant.

4.1.3.1 Illegal Activity

Users are specifically prohibited from accessing, downloading, storing, printing or disseminating anything using City Technology Resources that is considered inappropriate, offensive, illegal, disrespectful to others, or that could instigate legal conflicts, or otherwise harm the City.

4.1.3.2 Objectionable Material

The City's Technology Resources must not be used for the transmission, obtaining possession, demonstration, advertisement or requesting the transmission of objectionable material including, but not limited to:

- Pornography;
- An article or image that promotes hate, crime or violence, or incites or instructs in matters of hate, crime or violence; or
- An article or image that describes or depicts any material, in a manner that is likely to cause offense to a reasonable adult.

4.1.3.3 Restricted Material

City Technology Resources must not be used to transmit or make available restricted material to a minor. City Policy defines restricted material as an article that a reasonable adult—by reason of the nature of the article, or the nature or extent of references in the article—would find offensive as to matters of sex, race, ancestry or native origin, drug misuse or addiction, crime, cruelty, violence would regard as unsuitable for a minor to see, read or hear.

Users should be aware that there are severe penalties for such activities. The police or a person authorized for the purposes under state or federal law may without a warrant, at any reasonable time, enter any place where the operating of a Technology Resource is carried on and inspect any articles and records kept on the premises and may seize anything that the member reasonably suspects is connected with an offense that is found on or in the place. In addition, there are penalties for delaying, obstructing or otherwise hindering the police or authorized person in the performance of their functions and for giving false or misleading statements, which are misleading through the omission of information.

4.1.3.4 Restricted Activities

The City prohibits use of City Technology Resources for the conduct of a business enterprise, participation in activities for profit purposes, or involvement in activities contrary to the spirit of City Policies including, but not limited to:

- Gambling or performing an act of playing for stakes, involving a monetary wager, in the hope of winning (including the payment of a price for a chance to win a prize); including, but not limited to sports betting, poker, blackjack, and casino wagering; or
- Day Trading or involvement in any act involving a monetary wager to broker or act as agent in the buying and selling of stocks and bonds.

4.1.3.5 Restricted Hardware and Software

It is illegal, unethical and contrary to City Policy to use City Technology Resources to generate viruses, worms or any malicious devices to contaminate other Technology Resources. Users should not knowingly possess, give to another person, install on any of the City Technology Resources, or run, programs or other information, which could result in the violation of the City Policy or the violation of any applicable license or contract.

The unauthorized physical connection of monitoring devices to City Technology Resources, which could result in the violation of City Policy or applicable licenses or contracts, is prohibited.

4.1.3.5.1 Copying and Copyrights

The City strongly supports strict adherence to software vendors' license agreements and copyright holders' notices. In particular, Users should be aware of and abide by City Policies on copying and using computer software. Most software that resides on the City Technology Resources is owned by the City or by third parties, and is protected by copyright and other laws, together with licenses and other contractual agreements.

Users are required to respect and abide by the terms and conditions of software use and redistribution licenses. Such restrictions may include prohibitions against copying programs or data for use on the City Technology Resources or for distribution outside the City; against the resale of data or programs, or the use of them for non-City purposes or for financial gain; and against public disclosure of information about programs without the owner's authorization. Users who develop new packages that include components subject to use, copying, or redistribution restrictions have the responsibility to make any such restrictions known to the users of those packages.

4.1.3.6 Harassment

City policy prohibits sexual and discriminatory harassment. City Technology Resources are not to be used to libel, defame, or harass any other person. Computer harassment is exemplified by, but not limited to:

- Intentionally using a City Technology Resource to annoy, harass, terrify, intimidate, threaten, offend or bother another person by conveying obscene language, pictures, or other materials or threats of bodily harm to the recipient or the recipient's immediate family;
- Intentionally using any City Technology Resource to contact another person repeatedly with the intent to annoy, harass, or bother, regardless of whether any actual message is communicated, and/or where no purpose of legitimate communication exists, and where the recipient has expressed a desire for the communication to cease;
- Intentionally using any City Technology Resource to contact another person repeatedly regarding a matter for which one does not have a legal right to communicate, once the recipient has provided reasonable notice that he or she desires such communication to cease (such as debt collection); or
- Intentionally using any City Technology Resource to invade the privacy, academic or otherwise, of another or the threatened invasion of the privacy of another.

The display of offensive material in any publicly accessible area is likely to violate City harassment policies. There are materials available on the Internet and elsewhere that some members of the City will find offensive. One example is sexually explicit graphics. The City can restrict the availability of such material if it considers its display in a publicly accessible area to be inappropriate. Public display includes, but is not limited to, publicly accessible computer screens and printers.

4.1.3.7 Wasting Technology Resources

One role of ITSS is to educate Users about proper usage of City Technology Resources. Every effort will be made to help Users understand how to use City Technology Resources properly.

It is inappropriate to deliberately perform any act that will impair the operation of any part of the City Technology Resources or deny access by legitimate Users to any part of them. This includes, but is not limited to, wasting resources, tampering with components or reducing the operational readiness of the City Technology Resources.

Wastefulness includes, but is not limited to, passing chain letters, willful generation of large volumes of unnecessary printed output or disk space, willful creation of unnecessary multiple jobs or processes, or willful creation of heavy network traffic. In particular, the practice of willfully using City Technology Resources for the establishment of frivolous and unnecessary chains of communication is an inappropriate waste of resources.

The sending of random mailings (for example, "junk mail") is not permitted. It is poor etiquette at best, and potentially harassment, to send unwanted mail messages to strangers deliberately. Recipients who find junk mail objectionable should mark as junk or delete. If the junk mail continues, the recipient should contact ITSS helpdesk.

4.1.3.8 Game Playing

The City Technology Resources are not to be used for recreational or competitive game playing. The intention of this policy is to prohibit game playing with programs and other software that may adversely impact others, violate other provisions of this Policy or damage City ability to process City Business transactions promptly.

4.1.3.9 Commercial Use

City Technology Resources are provided for the support of the City's mission. Except where expressly permitted, it is inappropriate to use City Technology Resources for:

1. Commercial gain or placing a third party in a position of commercial advantage;
2. Any non-City related activity, including non-company related communications; and
3. Commercial advertising or sponsorship except where such advertising or sponsorship is clearly related to or supports the City's mission or the service being provided.

4.1.3.10 Use for Personal Business

City Technology Resources may not be used in connection with compensated outside work or for the benefit of organizations not related to the City, except where expressly permitted.

4.2 Appropriate Use of Electronic Communications

City Technology Resources are limited to use for City Business. All Electronic Communications transmitted over or by means of any City Technology Resource shall be limited to those which involve City functions, activities or

other business, or that contain information essential to its officials, employees and consultants for the accomplishment of City-related tasks.

Electronic Communications access, including Internet and Intranet access, is provided to authorized Users as a communication tool for appropriate internal and external City Business. Implementation of this Policy and its directives are essential to protecting vital City resources and interests. Accordingly, City Policies including, but not limited to, those addressing copyright, confidentiality, harassment and compliance with equal employment laws; applicable federal, state and local laws; and the corporate code of conduct govern use of any Electronic Communications access.

4.2.1 Introduction

All Users who use Electronic Communications are expected to conduct their use with the same integrity as in face-to-face or telephonic business operations. Any use perceived to be illegal, harassing, and offensive or in violation of other City Policies may be the basis for disciplinary action up to and including termination for employees and/or loss of use or legal action for all Users.

4.2.2 Scope

This Policy applies to all Users. Users must be aware of the following restrictions that have been placed on use of Electronic Communications:

- Electronic Communications on City Technology Resources are intended for City-related business purposes with other limited incidental uses. All Electronic Communications on city Technology Resources are the property of the City, just as are hard copies of City records. The City reserves the right to retrieve and make proper and lawful use and/or disclosure of any and all Electronic Communications transmitted through any City Technology Resource.

- Electronic Communications determined to be Public Records shall be retained in electronic folders or, as described above, in hard copy. Such Electronic Communications shall be retained for the period described in the City's Records Retention Schedule or expiration of a Litigation Hold or resolution of a Public Records Act Request.

4.2.3 Appropriate Use and Responsibility of Users

City guidelines and standards for appropriate and responsible use of Electronic Communications are derived directly from the same standards of common sense and decency that apply to the use of any City Technology Resource. All usage inconsistent with these objectives is considered inappropriate use.

All Users must recognize and comply with standards and guidelines for the appropriate use of Electronic Communications.

1. No Electronic Communications should be unethical, be perceived to be a conflict of interest with the City's interests, or be inconsistent with City Policies.

2. Users must take particular care not to disseminate confidential City information or personal information to unauthorized users. Users should refrain from leaving messages containing confidential or personal information on answering machines or voice-mail systems.
3. Electronic Communications must be able to withstand scrutiny without causing embarrassment to the City, its employees or citizens. Because Electronic Communications deleted by a User may still be present, either in another person's mailbox, or on a file server or back-up file of a User. Care must be taken to ensure the accuracy and professionalism of all Electronic Communications.
4. Users must not send messages prohibited or restricted by government security laws or regulations. Emailing copies of documents in violation of copyright laws or licensing agreements is also prohibited.
5. Users should consider Electronic Communications to be the electronic equivalent of a postcard. Users must recognize their responsibility for the content, dissemination and management of the messages they send. Electronic Communications should:
    - Be courteous and polite;
    - Be consistent with City standards of conduct;
    - Protect others' right to privacy and confidentiality; and
    - Contain an accurate, appropriate and informative signature.
6. Users should secure access to their email and voice mailboxes through the use of passwords and other security devices and should not leave the system on and available to unauthorized users.
7. Users may not reveal any confidential internal email names and passwords of the City's email or voicemail users to anyone including other Users or people who request such information over the telephone and seem to have a legitimate reason for asking. All such requests must be referred to the Records Department.
8. City policy prohibits use of profanity, obscenities, or derogatory remarks in Electronic Communications referencing other individuals. Such remarks, even when made in jest, may create legal problems.
9. Users are prohibited from sending or forwarding any Electronic Communications that a reasonable person would consider to be defamatory, harassing or explicitly sexual. Users are also prohibited from sending or forwarding Electronic Communications via City Technology Resources that would be likely to offend on the basis of race, gender, national origin, sexual orientation, religion, political beliefs, disability or other protected characteristics.
10. Users must not use an Electronic Communication account assigned to another individual either to send or receive messages. If there is need to access another's Electronic Communications, such as while the other person is out ill, message forwarding and other resources must instead be used. Contact ITSS Director and/or Human Resource Director to arrange such access.

11. Users must not disclose credit card numbers, passwords, research and development information, and other sensitive data via any Electronic Communication.
12. Users must not unnecessarily or frivolously overload the Electronic Communications system including, but not limited to, spamming and junk mailing.
13. City Electronic Communications may not be used for commercial purposes unless authorized by City Manager in writing in advance.
14. Internal telephone books must not be distributed to third parties without specific authorization of a Department Manager.

4.2.4 Confidentiality and Security

Users should be aware that Electronic Communications are not a confidential means of communication. The City cannot guarantee that Electronic Communications will be private. Users should be aware that Electronic Communications could, depending on the technology, be forwarded, intercepted, printed, and stored by others. Users should also be aware that, once Electronic Communications are transmitted, they might be altered. Deleting an Electronic Communication from an individual workstation will not eliminate it from the various systems it has been transmitted across. Therefore, Users should have no personal expectation that their Electronic Communications using City Technology Resources are private.

The City reserves the right to review all Electronic Communications stored or transmitted on City Technology Resources. Although, the City does not intend to monitor the contents of Electronic Communications routinely, Users should expect that System Administrators with or without the permission of the User might access Electronic Communications. However, no other individuals may monitor or access Electronic Communications of another User unless proxy rights have been delegated by the System Administrators and approved by ITSS Director and/or Human Resource Director.

All Users must accept and abide by management directives to ensure information security, including, but not limited to:

- Users must verify the integrity of their password and abide by City Policy on password security (see section on Password Requirements);
- Users are prohibited from sending confidential material through any Electronic Communications system unless it is marked confidential or otherwise protected;
- Users must take extreme care that confidential information be redirected only where there is a need and with the permission of the originator, where possible;
- Users should recognize that Electronic Communications can be forged. Therefore, if an Electronic Communication is suspect, Users must verify its authenticity via telephone, or personally; and
- It is recommended that personal confidential material not be stored on or sent through Electronic Communications using City Technology Resources.

Unauthorized access of Electronic Communications is a violation of the City Policy and grounds for potential employee discipline or other repercussions for both employees and other Users.

4.3 Password Requirements

It is City policy that information must be protected in a manner commensurate with its sensitivity, value and criticality. To ensure the security of the City Technology Resources, all authorized users must be uniquely identified and authenticated before being granted access to Electronic Communications. User identification and authentication will be authorized through the use of User identification (User ID) unique to each User. To insure the security of the City Technology Resources, such access must be authorized, logged and periodically reviewed.

Identification Password Management

Passwords are a primary defense mechanism on many City Technology Resources. Careful selection of passwords improves security. Users are responsible for the robustness and maintenance of their own passwords. Accordingly, the following standards for password use shall apply:

- Passwords must be used where possible;
- Passwords and User IDs must be unique to each authorized User and must never be shared with anyone else;
- Passwords must not be easily associated with a particular User;
- Passwords must be memorized and never written down with other account information such as an account name;
- Passwords must not be stored in readable form in batch files, automatic log-in scripts, software macros, terminal function keys, in City Technology Resources without access control, or in other locations where unauthorized persons might discover them;
- Passwords must be changed every 90 days, or immediately if compromised or suspected of compromise;
- To prevent the compromise of multiple systems, Users must employ different passwords on each of the systems to which they have been granted access;
- The display and printing of passwords must be masked, suppressed, or otherwise obscured so that unauthorized parties will not be able to observe or subsequently recover them;
- Passwords must consist of a minimum of eight alphanumeric characters one of which is upper case and a special character.
- Any User who suspects that a password has been compromised must report it to ITSS immediately through the IT Help Desk.

City management reserves the right to revoke the privileges of any User at any time. Conduct that interferes with the normal and proper operation of City Technology Resources, which adversely affects the ability of others to use

these City Technology Resources, or which is harmful or offensive to others, will not be permitted.

4.3.1 Password Standards

The following are standards for password construction:

- Passwords must never be related to a User's job or personal life. Details such as spouse's name, license plate, social security number, and birthday must not be used unless accompanied by additional unrelated characters;
- Passwords must not be the same as User IDs or given name;
- Users must not construct passwords that are identical or substantially similar to passwords that Users had previously employed;
- Must never use the default password for any software or hardware product;
- "Blank" passwords are prohibited;
- Passwords must never be derived from User's association with the City of Temecula; and
- Passwords must never consist of a word from a dictionary. Most basic cracking programs contain over 120,000 words, and plenty of variations.
- Users are encouraged to have a password to include numbers and mixed case letters.

4.4 Appropriate Use of City Technology Resources

City Technology Resources offer extensive capabilities, but also expose risks and threats. All Users are expected to be familiar with and to comply with this Policy.

1. City Technology Resources should not be used for personal purposes. Although incidental use of City Technology Resources for personal use is permissible, use of City Technology Resources for these types of activities consumes City Technology Resources and could potentially result in poor technology performance or even system failure.
2. Any use perceived to be illegal, harassing, offensive, in violation of other City Policies, or any other uses that would reflect adversely on the City can be the basis for disciplinary action up to and including termination for employees and other repercussions including legal action for all Users, including employees. Users are expected to conduct their use of City Technology Resources with the same integrity as in face-to-face or telephonic business operations.

4.4.1 Public Representations

4.4.2 Users must not publicly disclose City internal information via the City Technology Resources that may adversely affect City relations or public image. Care must be taken to properly structure comments and questions posted to social media, mailing lists, public news groups, and related public postings.

4.4.3 Downloading

Software should not be downloaded without approval of ITSS. All software used on City Technology Resources can only be installed by ITSS, following all licensing agreements and procedures. All software downloaded from non-City sources must be screened with virus detection software prior to being installed by ITSS and may require testing on a stand-alone (not networked), non-production machine.

4.4.4 Contacts

Contacts made over the Internet should not be trusted with City information unless reasonable steps have been taken to ensure the legitimacy of the contacts. This applies to the release of any City internal information.

4.4.5 Information Security

Login passwords, User IDs and other parameters that can be used to gain access to City Technology Resources, is confidential information and must not be sent over any Technology Resource in readable form. This information must not be posted on electronic bulletin boards, listed in telephone directories, placed on business cards, or otherwise made available to third parties without the advance written permission of the ITSS Director. Telephone numbers, fax numbers, and email addresses of a User may be disclosed by the User.

4.5 Software Security

The City strongly supports strict adherence to software vendors' license agreements. Adherence to these agreements is subject to random audits by these vendors or the Software Publishers Association (SPA). When City Technology Resources are employed, copying of software in a manner that is not consistent with the vendor's license is strictly forbidden. Users must not use any externally provided software from a vendor other than those approved by ITSS.

4.6 Security

4.6.1 Right to Examine

At any time and without prior notice, City management reserves the right to examine Electronic Communications including personal Electronic Communications, web browser cache files, web browser bookmarks, and other information stored on or passing through City Technology Resources. Such management access assures compliance with internal policies, assists with internal investigations, and assists with the management of City Technology Resources. Every attempt will be made to ensure that the User's privacy is respected.

4.6.2 Privacy

Users using City Technology Resources should realize that their communications are not automatically protected from viewing by third parties.

Unless encryption is used, Users should not send information over the Internet if they consider it to be private.

4.7 Reporting Security Problems

It is the responsibility of all Users to report any known or suspected breach of security, such as passwords or other system access control mechanisms to the ITSS Department.

The ITSS Director must be notified immediately when:

1. Sensitive or confidential City information is lost, disclosed to unauthorized parties, or suspected of being lost or disclosed to unauthorized parties;
2. Unauthorized use of City Technology Resources has taken place, or is suspected of taking place;
3. Passwords or other system access control mechanisms are lost, stolen, or disclosed, or are suspected of being lost, stolen, or disclosed; or
4. There is unusual system behavior such as missing files, frequent system crashes and misrouted messages, as these types of system behavior may be related to virus infections or other security problems and must be promptly reported and investigated.

4.8 Hardware Security

To ensure that computer systems are used in an effective and productive way, City Technology Resource hardware must be physically secured and the integrity of operating systems maintained.

1. On City Technology Resources, Users must never change operating system configurations, upgrade existing operating systems, or install new operating systems. If such changes are required Users should contact ITSS and ITSS administrators will perform them.
2. Users must not bring their own computers, computer peripherals, or computer software into City facilities without prior written authorization from their Department Head. Personal computers must be labeled clearly with the name of the owner. Desktop PCs, laptops, mobile devices, and City Technology Resources must not leave City offices unless authorized in writing by a department manager.

Printers used to produce sensitive and confidential information should be monitored and sensitive files must be overwritten on fixed disks, tapes, or cartridges.

5 Appropriate Use of Specific City Technology Resources: City-Issued Cellular Phones and Radios

Technology can significantly enhance local service delivery. Cellular telephones and radios are often practical and economical for safety services and emergency communications, and can enhance productivity. In all cases, the issuance of cellular phones or radios to Users is a privilege, not a right or an entitlement. Failure to abide by the procedures set forth in this Policy may result in the loss of use of the cellular phones or radios and in certain circumstances, may result in possible disciplinary action for employees.

5.1 Introduction

It is the intent of the City to provide each Department with effective communication devices, within the constraints of available resources. The City recognizes the need of City-owned cellular telephones and radios, and by this Policy establishes procedures for their authorization, deployment, and use in order to contain costs, ensure Departmental accountability, personal responsibility, and prevent improper use. It is important that each User assume personal responsibility for the prudent use of City-owned communication devices.

5.2 Appropriate Use and Responsibility of Users

City-owned cellular phones or radios are to be viewed as an asset provided to further assist Users in effectively completing their areas of responsibility for the City. The issuance of such communication equipment is also to be considered a vital resource in the event of an emergency. It is a goal, to ensure that City vehicles are configured with emergency (800 MHz) radios for two-way communications.

Users are responsible for maintaining adequate physical protection of the communication equipment issued to them by the City. Users shall immediately notify their Department Head or designee, who in turn shall notify the ITSS Director, if any City-owned cellular phone or radio is damaged, lost or stolen. Cellular phone and radio logs are Public Records.

Any communication equipment purchased by the City is owned by the City and must be returned to the City when the User separates from service or the need of such communication equipment no longer exists.

No User shall record any telephone call, without the knowledge and consent of all parties to the call.

The City reserves the right to terminate cellular service privileges of any User for any reason.

5.3 Inappropriate Use

City issued communication equipment are not considered a User's personal device. California law prohibits drivers from using a cellular phone while operating a vehicle without a hands-free device, e.g. wired headset (ear buds), speaker, or Bluetooth headset. It is City policy to comply with California law when using a City-owned cellular phone while operating in any vehicle. The ITSS Department provides wired headsets (ear buds) for all City-owned cellular phones. In order to further define inappropriate use, the following list is provided. Prohibited uses of cellular phones and radios include, but are not limited to:

- Any illegal use or activity
- Threats
- Slander/Libel
- Defamation
- Obscene, suggestive or offensive messages or communications
- Political endorsements or activities

6 Proximity Keys

Internal entrance to City Hall areas is extended to employees by the City. Proximity keys are issued to all Regular, Part-Time, Temporary, Project Employees, and Interns. Interns' access will be automatically disabled every 30 days unless otherwise noted by related department manager.

The City prohibits the sharing of proximity keys.

Users are required to notify ITSS immediately if proximity keys or readers are lost, damaged or stolen.

7 Technology Resource Check Out

The City understands the need occasionally to check out technology resources for work related issues. City Technology Resources such as: laptops, projectors and digital cameras are available for check out through the ITSS Department. Users in need of the equipment must have proper approval from department manager. A request in advance for the use of such City Technology Resource is necessary. If the City Technology Resource is available, Users must sign for receiving and return of any City Technology Resource on loan.

Users are responsible for maintaining adequate physical protection of the City Technology Resource issued to them by the City. Users shall also immediately notify their department head or designee, who in turn shall notify the ITSS Director, if any City-owned communications equipment is damaged, lost or stolen.

8 Employee Computer Purchase Program

The City has incorporated a program that allows employees to borrow, at no interest, up to $2,000 to purchase personal computer/supplies with a loan repayment up to 24-months. This program is available for full-time and part-time City employees. For more information, please visit SharePoint or the ITSS Department.

9 User Use of Technology Resources Not Owned and/or Controlled by City

Users should not store Electronic Communications that involve City Business on any Technology Resources that are not owned, issued and/or controlled by the City. When Users are using Technology Resources that are not owned, issued and/or controlled by the City to conduct City Business, Users should be aware and must acknowledge and agree that any Electronic Communication that is stored or transmitted through such Technology Resource is considered a Public Record and is subject to the same terms as any Electronic Communication stored or transmitted on City Technology Resources. Should the City receive a Public Records Request, or otherwise require access to Electronic Communications related to City Business stored or transmitted on or by personal or commercial Technology Resources, the User shall provide access to such Electronic Communications immediately upon request of the City. Additionally, User shall not delete any Electronic Records related to City Business prior to the expiration of the period described in the City's Records Retention Schedule or expiration of a Litigation Hold or resolution of a Public Records Act Request. The City may require that a User execute an affidavit confirming that the User has thoroughly searched its personal or commercial Technology Resource and has provided all responsive Electronic Communications.

POLICY NO. 13

STATE MANDATED TRAINING

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**State Mandated Training**
Policy No.	**13**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to outline the specific requirements of state mandated training for Council Members, specifically as it relates to AB 1234 and AB 1661.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

AB 1234 Mandatory Ethics Training
Government Code Sections 53235 and 53235.1 state that, if a local agency provides compensation, salary, or a stipend to a member of a legislative body or reimbursement for expenses incurred by a member of a legislative body in the performance of official duties, then said local agency officials shall receive two-hour training in ethics. Training opportunities are available online and in-person through a variety of sources including the Attorney General, Fair Political Practices Commission, League of California Cities, Institute for Local Government and other agencies and municipal law firms. In the City of Temecula, ethics training is mandated for the City Council, boards and commissions and executive staff. The City Clerk's office oversees the completion of said training and maintains relevant records pursuant to law.

AB 1661 Sexual Harassment Prevention Training and Education
Government Code Sections 53237-53237.5 requires local agency officials, including Council Members, to receive two hours of sexual harassment prevention training and education within the first six months of taking office and every two years thereafter if the agency provides any type of compensation, salary, or stipend to those officials. Training opportunities are available online and in-person through a variety of sources including the Attorney General, Fair Political Practices Commission, League of California Cities, Institute for Local Government and other agencies and municipal law firms. In the City of Temecula, ethics training is mandated for the City Council, boards and commissions and executive staff. The City Clerk's office oversees the completion of said training and maintains relevant records pursuant to law.

POLICY NO. 14

CONFLICT OF INTEREST LAWS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Conflict of Interest Laws**
Policy No.	**14**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to provide general guidance and raise awareness of potential conflicts of interest that may arise periodically in the course of public service by Council Members. Council Members are encouraged to seek legal advice from the City Attorney for specific issues that may arise.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

Conflict of Interest Laws
The Political Reform Act, set forth in Government Code Sections 81000 to 91014, regulates conflicts of interest through (1) disclosure and (2) prohibition of participation in the decision-making process. The Act requires Council Members to annually disclose all financial interests that may be affected by decisions made in their official capacity. This includes investments, real property, and income. Council Members must also disqualify themselves from making and/or participating in making any governmental decision that will have a foreseeable material financial affect on any financial interest of the Council Member or certain family members.

When Council Members must disqualify themselves due to a financial interest, they are prohibited not only from "making" a decision but also from "participating" in the decision. Generally, an official makes a decision when the Council Member votes on a matter, appoints a person, obligates or commits the City to any course of action, or enters into any contract on behalf of the City. An official participates in making a decision when the official negotiates on behalf of the City, or advises or makes recommendations to the decision maker, either directly or without significant intervening substantive review.

The City Attorney prepares an annual Summary of the Conflict of Interest Laws Manual that is attached as Appendix 3 in the City Council Protocol Manual.

Conflict of Interest Code. The Political Reform Act requires state and local government agencies to review and adopt conflict of interest codes biannually. The City of Temecula adopts its Conflict of Interest Code in even-numbered years. The City's Conflict of Interest Code adopts the State Political Reform Act and designates certain City officials other than the Council who are subject the conflict of interest laws. The Code is attached as Exhibit A.

Statements of Economic Interest

A financial disclosure form (Statement of Economic Interest - Form 700) must be filed with the City Clerk no later than April 1 of each year for financial interests pertaining to the preceding calendar year. The April 1 deadline may be adjusted by the Fair Political Practices Commission (FPPC) for holidays and/or weekends. Council Members must also file a statement within 30 days of assuming office or leaving office. Filers shall file said statement electronically through NetFile, the City's certified electronic filing system.

Advice Regarding Conflicts of Interest

A Council Member who is uncertain as to whether they have a conflict of interest is encouraged to seek clarification from the City Attorney prior to the Council Meeting at which the matter will be discussed. The City Attorney or the official may also request a formal opinion from the FPPC.

Attachments

Exhibit A - Conflict of Interest Code

EXHIBIT A

POLICY

RESOLUTION NO. 2022-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA ADOPTING THE CITY'S 2022 CONFLICT OF INTEREST CODE

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council of the City of Temecula has previously adopted a Conflict of Interest Code to apply to certain officers and employees of the City with an Exhibit A designating certain positions within the City that require the filing of economic disclosure forms.

Section 2. The City Council of the City of Temecula does hereby amend the Conflict of Interest Code for the City of Temecula by deleting Exhibit A and substituting in its place a new Exhibit A, which is attached hereto and incorporated herein by this reference.

Section 3. The City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 15th day of November, 2022.

Matt Rahn, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Resolution No. 2022-84 was duly and regularly adopted by the City Council of the City of Temecula at a meeting thereof held on the 15th day of November, 2022, by the following vote:

AYES:	5	COUNCIL MEMBERS:	Alexander, Edwards, Rahn, Schwank, Stewart
NOES:	0	COUNCIL MEMBERS:	None
ABSTAIN:	0	COUNCIL MEMBERS:	None
ABSENT:	0	COUNCIL MEMBERS:	None

Randi Johl, City Clerk

SECTION 2. EXHIBIT A

DESIGNATED CITY OF TEMECULA EMPLOYEES AND DISCLOSURE CATEGORIES

The following positions entail the making or participating in the making of decisions which could have a material effect on financial interests.

Designated Position	**Disclosure Categories**
Assistant City Manager	1
Assistant Director of Community Development	1
Assistant Director of Community Services	1
Assistant Director of Finance	1
Assistant Director of Information Technology and Support Services	1
Assistant to the City Manager	1
Building Official	1
Chief of Police	1
Community Services Superintendent	1
Deputy City Manager	1
Designated Consultant*	1
Director of Community Development	1
Director of Community Services	1
Director of Finance	1
Director of Human Resources and Risk Management	1
Director of Information Technology and Support Services	1
Director of Legislative Affairs / City Clerk	1
Director of Public Works/City Engineer	1
Economic Development Manager	1
Engineering Manager	1
Exempt Officials	0

Fire Chief	1
Finance Manager	1
Fiscal Services Manager	1
Information Technology Manager	1
Maintenance Manager	1
Planning Manager	1
Principal Civil Engineer	1
Principal Management Analyst	1
Senior Civil Engineer	1
Senior Management Analyst	1
Senior Planner	1
Members of all City Commissions, Boards, and Committees (Other than Government 87200 Filers)	1

DESIGNATED CONSULTANTS:

Consultants who fit into one or more of the following categories shall be included in the list of designated employees as "Designated Consultants":

1. Consultants who make (not just recommend) governmental decisions, such as whether to approve a rate, rule, or regulation, whether to issue, deny, suspend, or revoke any permit, license, application, certificate or similar authorization, adopt or grant City approval to a plan, design, report, study, or adopt or grant City approval of policies, standards, or guidelines for the City or any subdivision thereof.

2. Consultants who serve in a staff capacity with the City, and in that capacity participate in making a governmental decision by providing information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

3. Consultants who perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a designated position in the City's Conflict of Interest Code.

When the consultant is a corporation, partnership, or limited liability company, only individuals who fit into one of the three categories of "Designated Consultants" described above must file disclosure statements.

Designated Consultant shall report all reportable interests in real property in the jurisdiction; reportable income and business positions; reportable investments; and reportable gifts within the disclosure category applicable to Designated Consultants unless the City Manager determines in writing that a particular consultant is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the section. If the City Manager determines in writing that a particular consultant is not required to fully comply with the requisite disclosure requirements, then such written determination shall include a description of the consultant's duties and based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

** The Mayor, City Council, Members of the Planning Commission, City Manager, City Attorney, and City Treasurer are all required to file disclosure statements pursuant to (Government Code 87200) and are thus not included herein.

RESOLUTION NO. 94-105

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA ADOPTING AN AMENDED CONFLICT OF INTEREST CODE

WHEREAS, the City Council of the City of Temecula has previously adopted a Conflict of Interest Code to apply to certain officers and employees of the City; and

WHEREAS, the City Council of the City of Temecula desires to adopt an Amended Conflict of Interest Code;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF TEMECULA DOES RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That the Amended Conflict of Interest Code, attached hereto as Exhibit A, is hereby adopted as the Conflict of Interest Code for the City of Temecula.

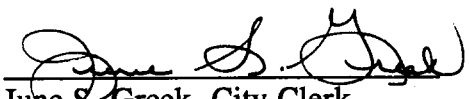
Section 2. The previously adopted Conflict of Interest Code for the City of Temecula is of no further force and effect.

Section 3. The City Clerk shall certify the adoption of this resolution.

APPROVED AND ADOPTED, this 15th day of November, 1994.

Ron Roberts, Mayor

ATTEST:



June S. Greek, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) SS
CITY OF TEMECULA)

I, June S. Greek, City Clerk of the City of Temecula, hereby do certify that the foregoing Resolution No. 94-105 was duly adopted at a regular meeting of the City Council of the City of Temecula on the 15th day of November, 1994 by the following roll call vote:

AYES:	5	COUNCILMEMBERS:	Birdsall, Muñoz, Parks, Stone, Roberts
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

June S. Greek, City Clerk

CONFLICT OF INTEREST CODE
OF THE
CITY OF TEMECULA

SECTION 1. Purpose. Pursuant to the provisions of Government Code Sections 87300, et seq., the City of Temecula (hereinafter referred to as "City") hereby adopts the following Conflict of Interest Code. The provisions of this Code are in addition to those contained in Title 9, Chapter 7 of the Government Code (Section 87100 et seq.). Except as otherwise indicated, the definitions contained in Title 9, Chapter 2 of the Government Code (Section 8200 et seq.) are incorporated herein and apply to this Code. It is the purpose of this Code to provide for the disclosure of assets and income of designated employees which may be materially affected by their official actions, and, in appropriate circumstances, to provide that designated employees should be disqualified from acting in order that conflicts of interest may be avoided.

SECTION 2. Designated Positions. The positions listed in Exhibit "A" are designated positions. Officers and employees holding those positions are designated employees and are deemed to make or participate in the making of decisions which may foreseably have a material effect on a financial interest.

SECTION 3. Disclosure Statements. Designated positions shall be assigned to one or more of the disclosure categories set forth in Exhibit "B". Each designated employee or official shall file an annual statement disclosing that employee's or official's interest in investments, business positions, interests in real property and source of income designated as reportable under the category to which the employee's or official's position is assigned in Exhibit "B".

SECTION 4. Place and Time of Filing.

A. All designated employees or officials required to submit a statement of financial interests, (FPPC Form No. 730), shall file the original with the City Clerk's office.

B. The City Clerk's office shall make and retain a copy of the statement.

C. A designated employee or official required to submit an initial statement of financial interest, (FPPC Form No. 730), shall submit the statement within 30 days after the effective date of this Code, disclosing interests held including investments, business positions, and interests in real property on the effective date of this Code, and income received during the twelve (12) months prior to the effective date of this Code.

D. All persons appointed, promoted, or transferred to designated positions shall file initial statements not more than 30 days after assuming office.

E. The first statement of financial interests filed by a designated employee shall disclose the designated employee's reportable investments, business positions, and interests

in real property as those investments, positions, and interests in real property exist as of the effective date of this Code or the date the designated employee assumed office, whichever is later, and income received during the preceding twelve (12) months.

F. Annual statements shall be filed by April 1, of each year by all designated employees. Such statements shall disclose reportable investments, business positions, interests in real property, and income held or received at any time during the previous calendar year or since the designated employee took office if during the calendar year.

G. A designated employee required to file a statement of financial interest with any other agency which is within the same territorial jurisdiction and whose disclosure requirements are comparable may comply with the provisions of this Code by filing a duplicate copy of the statement filed with the other agency, in lieu of an entirely separate statement.

H. Every designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing reportable investments, business positions, interests in real property, and income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.

I. A designated employee who resigns his or her position within 30 days twelve (12) months following initial appointment or within thirty (30) days of the date of a notice mailed by the filing officer of the individual's filing obligation, whichever is earlier, is not deemed to assume or leave office, provided that during the period between appointment and resignation the individual does not make, participate in making, or use the position to influence any decision of the City or receive or become entitled to receive any form of payment by virtue of being appointed to the position. Within thirty (30) days of the date of a notice mailed by the filing officer, the individual shall do both of the following:

1. File a written resignation with the appointing power.

2. File a written statement with the filing officer on a form prescribed by the commission and signed under penalty of perjury stating that the individual, during the period between appointment and resignation, did not make, participate in the making or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

SECTION 5. Contents of Disclosure Statements. Disclosure statements shall be made on forms supplied by the City Clerk's Office, (FPPC Form No. 730), and shall contain the following information:

A. Contents of Investment and Real Property Reports. When an investment or an interest in real property is required to be disclosed, the statement shall contain:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held and a general description of the business activity in which the business entity is engaged;

3. The address or other precise location of the real property;

4. A statement indicating whether the fair market value of the investment or interest in real property equals or exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), whether it exceeds ten thousand ($10,000) but does not exceed one hundred thousand dollars ($100,000), or whether it exceeds one hundred thousand dollars ($100,000). For purposes of this Code, "interest in real property" does not include the principle residence of the designated employee or any other property which the designated employee utilizes exclusively as the employee's personal residence.

5. For purposes of this subdivision (a) of Section 5, "interest in real property" does not include the principal residence of the filer or any other property which utilizes exclusively as the personal residence of the filer.

B. Contents of Personal Income Reports: When personal income[1] is required to be disclosed under this Code or pursuant to the Political Reform Act, the statement shall contain:

1. The name and address of each source of income aggregating two hundred fifty dollars ($250) or more in value, or fifty dollars ($50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement indicating whether the aggregated value of income from each source, or, in the case of a loan, the highest amount owed to each source, was at least two hundred fifty dollars ($250) but did not exceed one thousand dollars ($1,000), whether it was in excess of one thousand dollars ($1,000) but not greater than ten thousand dollars ($10,000), or whether it was greater than ten thousand dollars ($10,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value and the date on which the gift was received;

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[1] "Income" is defined in Title 9, Chapter 2 of the Government Code (section 82030). That definition is attached hereto as Exhibit "C."

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan.

C. Contents of Business Entity Reports. When the designated employee's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported, the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the designated employee's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars ($10,000) during a calendar year;

3. Income of a business entity is required to be reported only if the direct, indirect, or beneficial interest of the designated employee and his or her spouse in the business entity aggregates a 10 percent or greater interest. In addition, for purposes of subparagraphs 2 and 3 of this subsection, the disclosure of persons who are clients or customers of a business entity is required only if it is reasonably foreseeable that the client or customer may be materially affected by the decisions of the designated employee.

4. When a payment, including an advance or reimbursement for travel is required to be reported pursuant to (b) and (c) of this Section 5, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

D. Contents of Business Position Disclosure. When business positions are required to be reported, the designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management; a description of the business entity in which the business is engaged, and the designated employee's position with the business entity.

E. Acquisition or Disposal During a Calendar Year. If any otherwise reportable investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

SECTION 6. Disqualification. Designated employees shall disqualify themselves from making, participating in the making of, or in any way using their official position to influence a governmental decision when it is reasonably foreseeable that the decision will have a material financial affect distinguishable from its effect on the public generally, on the designated

employee, or a member of his or her immediate family, or on:

A. Any business entity in which the designated employee has a direct or indirect investment worth one thousand dollars ($1,000) or more;

B. Any real property in which the designated employee has a direct or indirect interest worth one thousand dollars ($1,000) or more;

C. Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars ($250) or more in value provided to, received by or promised to the designated employee within twelve (12) months prior to the time when the decision is made;

D. Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

E. Any donor of, or any intermediary of agent for a donor of, a gift or gifts aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the designated employee within twelve (12) months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a designated employee, by an agent on behalf of a designated employee, or by a business entity or trust in which the designated employee, the designated employee's agent, spouse, and dependent children own directly, indirectly, or beneficially a ten percent (10%) interest or greater.

No designated employee shall be required to disqualify himself or herself with respect to any matter which could not legally be acted upon or decided without his or her participation. A designated employee required to disqualify himself or herself shall notify the City Manager and the City Clerk in writing, and the City Clerk shall record the person's disqualification.

Violations. Pursuant to Government Code Section 87300, this Code "shall have the force of law" and any violation of any provision of this Code shall be punishable in accordance with Government Code Section 91000 to 91015 and include criminal and civil sanctions, as well as discipline within the City's Personnel System.

SECTION 7. EXHIBIT "A"
Designated City of Temecula Employees
and Disclosure Categories

The following positions entail the making or participation in the making of decisions which may foreseeably have a material effect on financial interests:

Designated Position	Disclosure Categories
Assistant City Manager	1
Building Official	1
Chief of Police	1
Chief Accountant	1
City Clerk	1
City Engineer/Director of Public Works	1
Consultant[2/]	1
Principal Engineer	1
Exempt Officials[3/]	0

2/ Consultants shall be included in the list of designated employees and shall disclose all of the information required to be disclosed by designated employees subject to the following limitation:

The City Manager or his or her designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirement described in this Section. Such written disclosure shall include a description and based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

3/ The Mayor, City Council, Members of the Planning Commission, City Manager, City Attorney, City Treasurer, and Director of Finance are all required to file disclosure statements pursuant to state law and thus are not included herein.

Director of Community Services 1

Financial Services Administator 1

Fire Chief 1

Maintenance Superintendent 1

Planning Director 1

Recreation Superintendent 1

Senior Accountant 1

Senior Building Inspector 1

Senior Management Analyst 1

Traffic Engineer 1

Senior Planner 1

Members of all City Commissions,
Boards, and Committees Not
Otherwise Required to File
Conflict of Interest Statements 1

SECTION 8. EXHIBIT "B"

Categories of Reportable Economic Interests

Designated Persons in Category "1" Must Report:

All investments, interests in real property, income, and any business entity in which the person is a director, officer, partner, trustee, employee, or holds any position of management. These financial interests are reportable only if located within and subject to the jurisdiction of the City, or if the business entity is doing business or planning to do business in an area subject to the jurisdiction of the City, or has done business within an area subject to the jurisdiction of the City at any time during the two years prior to the filing of the statement.

Designated Persons in Category "2" Must Report:

A. All Investments in real property located within or subject to the jurisdiction of the City.

B. Investments in any business entity which within the last two years has contracted or in the future foreseeably may contract with the City.

C. Income from any source which within the last two years has contracted or in the future foreseeably may contract with the City.

D. His or Her status as a director, officer, partner, trustee, employee, or holder of a position of management in any business entity which within the last two years has contracted or in the future foreseeably may contract with the City.

Designated persons in Category "3" must report:

A. Investments and business positions in, and income from business entities located in, doing business in, or planning to do business in the redevelopment project area and all interests in real property located within two miles of the redevelopment project area.

EXHIBIT "C"

82030. Income. A. "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income" other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

B. "Income" also does not include:

1. Campaign contributions required to be reported under Chapter 4 (commending with Section 84100).

2. Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic, or charitable organization.

3. Any devise or inheritance.

4. Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

5. Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States Government or a commodity future registered with the Commodity Futures Trading Commission of the United States Government, except proceeds from the sale of these securities and commodities futures.

6. Redemption of a mutual fund.

7. Alimony or child support payments.

8. Any loan or loans from a commercial lending institution which are made in the lenders' regular course of business on terms available to members of the public without regard to official status if:

A. Used to purchase, refinance the purchase of, or for improvements to, the principal residence of filer; or

B. The balance owed does not exceed ten thousand dollars ($10,000).

9. Any loan from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan from any such person shall be considered income if the lender is acting as an agent or intermediary for any person not covered by this paragraph.

10. Any indebtness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars ($10,000).

11. Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

12. Proceeds from the sale of securities registered with the securities and Exchange Commission of the United States Government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States Government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does no know or have reason to know the identity of the purchaser.

POLICY NO. 15

CODE OF ETHICS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Code of Ethics**
Policy No.	**15**
Approved:	**November 14, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth the Code of Ethics for the City Council of the City of Temecula.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

City Code of Ethics

Preamble
The citizens of the City of Temecula are entitled to responsible, fair and honest city government that operates in an atmosphere of respect and civility. Accordingly, the Temecula City Council has adopted this code to:

1. Describe the standards of behavior to which its leaders and staff aspire.
2. Provide an ongoing source of guidance to elected leaders, city officials and staff in their day-to-day service to the city.
3. Promote and maintain a culture of ethics.

Pledge
On November 14, 2023, the City Council of the City of Temecula adopted this City Code of Ethics, which applies to all City employees, officers, commissions, and elected or appointed officials and requires the following pledge:

Responsibility
- I understand that the community expects me to serve with dignity and respect, as well as be an agent of the democratic process.
- I avoid actions that might cause the public to question my independent judgment.
- I do not use my office or the resources of the city for personal or political gain.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the city and its citizens.

Fairness

- I promote consistency, equity and non-discrimination in public agency decision-making.
- I make decisions based on the merits of an issue, including research and facts.
- I encourage diverse public engagement in our decision-making processes and support the public's right to have access to public information concerning the conduct of the City's business.

Respect

- I treat my fellow city officials, staff, commission members and the public with patience, courtesy, civility, and respect, even when we disagree on what is best for the community and its citizens.

Honesty

- I am honest with all elected officials, staff, commission members, boards, the public and others.
- I am prepared to make decisions when necessary for the public's best interest, whether those decisions are popular or not.
- I take responsibility for my actions, even when it is uncomfortable to do so.

In addition, the City Council commits to the following core values:

1. As a representative of the City of Temecula, in practice, this value looks like: I will be ethical.
2. As a representative ofthe City of Temecula, I will be professional.
3. As a representative of the City of Temecula, I will be service-oriented.
4. As a representative of the City of Temecula, I will be fiscally responsible.
5. As a representative of the City of Temecula, I will be organized.
6. As a representative of the City of Temecula, I will be communicative.
7. As a representative of the City of Temecula, I will be collaborative.
8. As a representative of the City of Temecula, I will be innovative.

POLICY NO. 16

COMPENSATION AND/OR STIPENDS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Compensation and/or Stipends**
Policy No.	**16**
Approved:	**November 14, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth the requirements related to Council compensation and/or stipends as codified in the Government Code and the Temecula Municipal Code.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

The City of Temecula is a general law city formed under the laws of the State of California. The City Council compensation schedule for general law cities is set forth in Government Code Section 36516 et seq. Current City Council compensation is $600 per month pursuant to Temecula Municipal Code Section 2.04.050. City Council compensation was last adjusted in October 2023 via Ordinance No. 2023-08. Ordinance No. 2023-08 reset the compensation from $600 to $1,900 per month pursuant to Senate Bill 329.

On June 29, 2023, Senate Bill 329 (SB 329) was signed into law setting forth a new compensation schedule for City Council members. SB 329 declared that the compensation schedule for general law cities had not been adjusted since 1984, indicating compensation had not kept pace with inflation. The Legislature also declared that compensation adjustments for inflation may help city councils become more diverse allowing individuals from across different income levels to serve the public and support their families. SB 329 was permissive and not mandatory. SB 329 increased the maximum amount of City Council salaries based upon population size, permitted adjustments by ordinance at two public meetings, and allowed for additional modification under specific circumstances. Automatic adjustments for CPI were prohibited. For cities 75,000 - 150,000 in population, maximum compensation was set at one thousand nine hundred dollars ($1,900) per month. While SB 329 set forth an alternative calculation to the $1,900 amount based on a maximum 5% increase per year from the date of the last adjustment (2003-2023=20 years), this amount was $1,200, and less than the $1,900 amount set by population. As such, the $1,900 amount remained the maximum cap for compensation adjustment at the time Ordinance 2023-08 was adopted.

Ordinance No. 2023-08 will become effective after the results of the November 2024 general municipal election is certified by the City Council of the City of Temecula. A copy of Ordinance No. 2023-08 is attached as Exhibit A.

EXHIBIT A

POLICY

ORDINANCE NO. 2023-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING SECTION 2.04.050 OF THE TEMECULA MUNICIPAL CODE REVISING THE SALARY FOR COUNCIL MEMBERS TO NINETEEN HUNDRED DOLLARS PER MONTH AS PROVIDED IN GOVERNMENT CODE SECTION 36516 AND PROVIDING FOR REIMBURSEMENT OF NECESSARY EXPENSES

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Temecula does hereby find, determine and declare that:

A. Effective January 1, 2024, with the passage of Senate Bill 329 (Dodd), Government Code Section 36516 provides that council members in a city with a population of 75,000 – 150,000 are authorized to receive a salary of nineteen hundred ($1,900.00) per month. The population of a city for the purposes of establishing council member salaries may be based upon either a federal census or an estimate of population validated by the California Department of Finance.

B. The population of the City of Temecula in 2023 is 108,899 as validated by the California Department of Finance.

C. The need for the increase in Council salary is based on the following: (1) Council Members work many hours per month in addition to regular council meetings, including meeting with constituents, reviewing agenda reports for Council and City Commissions, attending subcommittee meetings, meeting with staff, and attending events on behalf of the City and not reflected in their current salary; and (2) increasing the salary may help the City Council become more diverse because increased salary can help individuals from across different income levels receive sufficient income from their service to help ensure that they can continue to serve the public and support their families.

Section 2. Section 2.04.050 of the Temecula Municipal Code is hereby amended to read as follows:

"2.04.050 Compensation

"A. In accordance with Government Code Section 36516, each council member shall be entitled to a salary of in the amount of nineteen hundred dollars ($1,900.00) per month.

B. Upon the submission of an itemized account, any council member may be reimbursed for the actual and necessary expenses incurred in the performance of official duty. The

Council may, by resolution, establish a schedule of actual and necessary expenses incurred in the performance of official duty for which council members may be reimbursed."

Section 3. As required by Government Code Section 36516.5, council members shall not be eligible for the $1,900.00 salary described in Section 1 of this ordinance until the term of office begins for council members elected at the November 2024 General Municipal Election. Until such time, council members shall continue to receive $600.00 per month in salary.

Section 4. Severability. If any portion, provision, section, paragraph, sentence, or word of this ordinance is rendered or declared to be invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining portions, provisions, sections, paragraphs, sentences, and words of this ordinance shall remain in full force and effect and shall be interpreted by the court so as to give effect to such remaining portions of the Ordinance.

Section 5. Effective Date. This ordinance shall take effect thirty (30) days after its adoption.

Section 6. Notice of Adoption. The City Clerk shall certify to the adoption of this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 24th day of October, 2023.

Zak Schwank, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 2023-08 was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 26th day of September, 2023, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the 24th day of October, 2023, by the following vote:

AYES:	3	COUNCIL MEMBERS:	Brown, Kalfus, Schwank
NOES:	2	COUNCIL MEMBERS:	Alexander, Stewart
ABSTAIN:	0	COUNCIL MEMBERS:	None
ABSENT:	0	COUNCIL MEMBERS:	None

Randi Johl, City Clerk

POLICY NO. 17

ELECTED OFFICE TRAVEL AND REIMBURSMENT

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Elected Official Travel and Reimbursement**
Policy No.	**17**
Approved:	**November 14, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to establish responsibilities and guidelines for elected officials when attending business or professional conferences, training seminars or other travel on City business. It is the intent of the City of Temecula to assure compliance with all state and federal laws, including United States Internal Revenue Service regulations and Assembly Bill 1234 (2005).

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

In general, all reimbursements to elected officials are a use of public funds. The City expects to reimburse reasonable costs incurred by elected officials when traveling on City business, and elected officials are expected to use good judgment in their expenditure of public funds. Reimbursement of business-related expenses paid to elected officials is generally tax-free; however, elected officials must substantiate the expenses with original receipts. A detailed record of all reimbursable expenses incurred during the travel must be submitted on a City Travel/Expense Form.

A. DEFINITIONS

1. Business Travel - authorized attendance at conferences, meetings, and seminars or authorized travel for any other purpose in connection with official City responsibilities. Business travel includes day trips and trips requiring one or more overnight stays in connection with official representation of the City to do the following:

a. Communicate with representatives of regional, state and national government on City adopted policy positions.

b. Attend trainings, seminars, symposiums, conferences, hearings, conventions or other meetings.

c. Interview persons, inspect facilities or institutions, conduct surveys, and exchange professional information or otherwise travel for the benefit of the City.

d. Act as host to persons who, for protocol reasons, merit appropriate courtesies.

e. Participate in such other activities requiring expenditures for travel and/or subsistence as are clearly necessary to serve in the best interest of the City.

2. Business Travel Period – the time that is necessary to travel by the most cost effective and appropriate travel method to attend conferences, meetings, and seminars related to City business. Additional time required to travel as the result of alternative travel methods selected by elected officials are not included in the business travel period and expenses are not subject to reimbursement.

3. Local Travel - travel within a radius of fifty miles from Temecula City Hall.

4. Out-of-Town Travel - travel greater than fifty miles from Temecula City Hall.

5. Mileage Allowance - the reimbursement paid to the elected official for the use of their own personal vehicle during travel on official City business. The mileage reimbursement rate will be the prevailing rate established by the Internal Revenue Service (IRS). Elected officials receiving a monthly automobile allowance are not eligible to receive an additional mileage allowance.

6. Allowable Expense - an expenditure deemed by the U.S. General Services Administration (GSA) as a stand-alone expense that is fully reimbursable, and not included as an incidental expense under per diem rates.

7. Incidental Expense - federal travel regulations define "incidental expenses" as fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards and stewardesses and others; transportation between places of lodging or business and places where meals are taken; and the mailing cost associated with filing travel vouchers.

B. PROVISIONS

1. Approvals

a. It is the policy of the City Council to publicly disclose and approve all requests for travel expense reimbursement from elected officials as a part of its approval for the List of Demands. If the travel is directly related to City business, defined as those legislative matters that fall within the jurisdiction of a local government municipality, such travel should be considered pre-approved for reimbursement. Any other requests for travel and subsequent reimbursement shall require pre-approval by the City Council.

b. Any number of elected officials may attend conferences if the funds for such purposes are specifically provided for and included in the annual budget, and the number of attendees is justified in consideration of the additional cost. Any other requests for travel and subsequent reimbursement shall require pre-approval by the City Council.

2. Transportation

a. Use of air, train, private car or bus shall be selected based on the most cost effective and appropriate method, taking into consideration distance as calculated by an internet mileage calculator such as MapQuest, and total costs to the City after all expense items are tabulated. Trips should be via the most direct and commonly traveled routes. Other routes may be authorized when official business requires their use. Costs associated with indirect routes, stops along the way for personal reasons, or extending the time beyond what is required for official business will not be paid for or reimbursed by the City. Once booked, changes to flights should be avoided whenever possible to minimize cost to the City.

b. If an elected official wishes to drive rather than fly to a destination, and the official does not receive a monthly automobile allowance, the City will reimburse the elected official the lesser of the mileage rate to and from the site or the amount of the lowest cost airline coach fare within one week after the meeting or conference is booked plus the cost of mileage to and from the airport, the cost of long term parking, and the cost of transportation from the airport to the meeting or conference site for the time necessary for the business travel only. If parking fees are charged at the meeting or conference location due to the elected official driving their personal vehicle, the mileage and parking costs will be reimbursed up to the cost of the airfare, mileage, parking, and transportation costs listed above for the time necessary for business travel. The City will not cover the cost of additional expenditures such as meals, lodging, parking and any other costs incurred resulting from the additional time required to travel by automobile.

c. Reimbursement for mileage shall be at the prevailing IRS established rate and mileage will be calculated from Temecula City Hall. Use of a privately owned vehicle on City business requires the driver to possess a valid California driver's license and to carry automobile insurance. Any damage to the vehicle or service repairs are of a personal nature, and are not reimbursable by the City, and the City shall assume no liability. Reimbursement will be based on the vehicle and not on the number attending (i.e., the owner of the vehicle will be paid and not the passengers). Mileage related to attending conferences or meetings requiring travel is submitted on the Travel Expense Form along with other conference or meeting expenses. Mileage not associated with travel, such as for local events, must be submitted monthly on a Mileage Reimbursement Form within 30 calendar days of the end of the month to be eligible for reimbursement. Such reimbursement is not available to those receiving a monthly automobile allowance.

d. Expenditures deemed as an allowable expense by the GSA such as tolls, parking, internet service and checked baggage for airlines, will be fully reimbursed upon presentation of the original receipts for the period of travel time required for City business. If an elected official chooses to extend the trip for additional days, expenditures for these days will not be paid for or reimbursed by the City. The cost for valet parking will only be reimbursed if no lower cost self-parking was available.

e. When the use of public air carrier transportation is approved, travel for all personnel shall be in coach class or equivalent service. Private automobile use to and from the airport shall be reimbursed for all miles at the current mileage rate. Long-term offsite parking must be used for travel exceeding 24 hours unless the onsite parking rate is lower. If, in lieu of parking at the airport, the elected official obtains a ride to and from the airport, the cost of the mileage for

both round trips will be covered up to what the cost would have been for one round-trip plus the cost of long term parking for the required travel period.

f. While traveling, the use of rental vehicles is discouraged. Shuttle services, buses, taxis, ride share, or car services, between airports and meeting locations will be covered. Rental vehicles shall only be permitted when no other transportation is available, or when alternate transportation would be more expensive or impractical. When rental vehicles are used, the least expensive vehicle practical shall be used, and car rental insurance must be purchased from the rental agency. Car rental fees will be covered only for the time required for the official travel.

3. Lodging

a. Lodging shall be obtained at the most economical rate available for good quality accommodations. In general, the City will cover the cost of hotel accommodations at the standard room rate, government room rate, or conference attendee rate, whichever is less. Upgrades to accommodations are not covered and must be paid for directly by the elected official.

1) If lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking.

2) The City will pay for a single occupancy room (including taxes, parking and other allowable expenses) for as many nights as is necessary to attend the meeting or conference based on the applicable agenda. Any extension of time for personal use is not covered and must be paid for directly by the elected official. If attendance at an event that is not on the agenda is required resulting in additional lodging, meal or other costs, the elected official must attach a statement or other documentation outlining the time and purpose of the meeting attended to obtain reimbursement for the additional costs. Lodging will be provided to elected officials the night prior to the meeting or conference when flight schedules do not allow for arrival on the day of the event prior to the start. Lodging will be provided on the last day of the event only if the event ends late in the day and no return flights are available. Elected officials must cancel any reservation that will not be used. If the City is charged for an unused reservation, the elected official will be responsible for that charge unless circumstances requiring cancellation were reasonably beyond their control.

b. An elected official may stay with a friend or relative while attending an out-of-town meeting or conference; however, the City will not reimburse the elected official for any payment to the friend or relative for lodging, meals or transportation.

4. Meals, Incidental and Allowable Expenses

a. For trips requiring an overnight stay, the allowable cost of meals at a hotel, restaurant, cafeteria, cafe or deli consumed by the elected official while on required business travel will be reimbursed when documented by appropriate receipts. The cost includes non-alcoholic beverages, taxes and tip. Elected officials are not eligible to receive a per diem allowance.

1) Elected officials are eligible to receive reimbursement for actual costs of meals and incidental expenses to the maximum allowance under the GSA Per Diem Rate Schedule (www.gsa.gov) for the location where the meeting or conference took place calculated daily meaning that the meals in totality will be reimbursed up to the maximum allowable for the day, not on an individual meal basis. Partial days, including the first and last days of the conference or event will be prorated according to the GSA Per Diem Rate Schedule. Meals for spouses or guests must be paid for by the elected official and are not eligible for reimbursement.

2) When meals are provided during a conference, those meals must be subtracted out of the per diem rate allowed for the day using the GSA Per Diem Rate Schedule provisions for partial days for the location in which the meeting took place. The provision of a "Continental Breakfast" will not be counted as a meal provided for the purposes of this section.

3) Receipts must show the itemized meal and beverages. Credit card receipts with no detail are not acceptable documentation.

4) Other expenditures deemed by the GSA as an allowable expense (i.e., checked baggage for airlines) are reimbursable.

5) Elected officials are required to submit supporting documentation and receipts for all reimbursable purchases, including the elected official's name and the nature of the business.

b. For trips not requiring overnight stays, the actual cost of meals at a hotel, restaurant, cafeteria, cafe or deli consumed by the elected official while on business travel will be reimbursed when documented by appropriate receipts. The actual cost includes non-alcoholic beverages, taxes and a 15% tip.

1) Receipts must show the itemized meal and should have the elected official's name and the nature of the business documented.

2) Reimbursement shall not exceed the daily meal limit amounts set above, regardless of the amount in receipts submitted.

3) Meals for travel under twenty-four hours may be taxed according to IRS regulations.

4) Elected officials will not be reimbursed for meals if the location of the meeting or conference is within the City, since the elected official could have the meal in the manner they normally choose.

5) Elected officials will not be reimbursed for meals which are already included in the conference registration fee.

6) If an elected official is attending a one-day seminar whereby lunch is not included in the price of the seminar, the reimbursement may not exceed the prevailing U.S. GSA lunch rate for the location in which the meeting took place.

5. Cash Advances and Credit Card Usage

a. If an elected official requires a cash advance for travel expenditures related to City business, a cash advance of a minimum of one hundred ($100) dollars up to a maximum of one thousand five hundred ($1,500) dollars may be made to the elected official.

1) Authorization shall be in the form of a check request from the City Manager to the Finance Department.

2) Cash advances shall be restricted to a maximum of meal and incidental allowances as defined in Section 4.

b. Approved cash advances should be submitted to the Finance Department three weeks prior to departure date.

1) The elected official will be notified by the Finance Department when the requested funds are available for pickup immediately prior to the dates of travel.

2) Receipt of a cash advance for travel expenses does not constitute pre-approval for the expenditure of the entire amount so advanced, as all expenditures must be reasonable, justified and approved.

c. If an elected official has accepted a cash advance, a reconciliation of the advance payment must be made based on the actual expenses incurred as part of the expense report and submitted to the City within ten (10) calendar days of returning from the conference or meeting.

1) If actual expenses exceed the amount of the advance, any additional expenses will be reimbursed.

2) If actual expenses do not exceed the expense advance received, the elected official shall reimburse the City for the unused portion within ten (10) calendar days of filing the expense report. Any unreimbursed cash advance will be withheld from the elected official's next stipend.

d. Elected officials may be issued a credit card by the City of Temecula. Such credit card is to be used for City business only as set forth in this policy (i.e., conference registration, lodging hotel, transportation, non-covered meals, meetings, etc.). Said credit card shall remain in the possession of the Executive Assistant to the City Council and shall be checked out from time to time when the need arises including when the elected official is traveling for City business. Use of the credit card remains subject to all other relevant provisions set forth in this policy, including the submittal of actual costs incurred by way of receipts separately and/or via the Travel/Expense Form.

6. Other Provisions

a. Spouses and guests are permitted to accompany the elected official on City travel and at conferences, seminars, and meetings, except when such accompaniment would interfere with the conduct of City business. Any additional costs associated with the participation of the spouse or other guests are the sole responsibility of the elected official.

b. If Internet access is necessary for City related business, the City will reimburse Internet access connection and/or usage fees away from home during the authorized business travel period. The rate must be listed as such on the invoice, so as not to be confused with other incidental costs.

c. Baggage handling fees of a generally accepted, reasonable amount and gratuities of up to 15% will be reimbursed.

7. Unauthorized Expenses

a. Items of a personal nature are not reimbursable, including movies, entertainment, premium television services, alcoholic beverages, snacks, gift certificates, laundering or dry-cleaning, spas, gyms, barbers, magazines, shoeshine, travel insurance, purchase of clothing or toiletries, loss of tickets, fines or traffic violations, non-mileage personal automobile expenses, including repairs, insurance or gasoline, personal losses incurred while on City business, excess baggage, spouse and/or guest accommodations, office equipment and other items of a personal nature.

b. Spouses and guests are allowed to accompany the elected official on City travel and at conferences, seminars· and meetings when using public or private transportation. Any additional costs associated with the participation of the spouse or other guests are the sole responsibility of the elected official including any increased lodging rate due to double occupancy. Any increase in cost due to a spouse or guest accompanying an elected official is not to be charged to the City and must be paid for directly by the elected official.

c. Expenses for which elected officials receive reimbursement from another agency are not reimbursable.

d. If unauthorized expenses have been paid by the City, the elected official will be responsible for immediate reimbursement to the City by cash or personal check. If the payment has not been received within twenty (20) calendar days after the event, the amount due will be deducted from the elected official's next monthly stipend.

C. TRAVEL/EXPENSE FORM

1. Upon return from the event, the elected official must submit an approved Travel/Expense Form to the Finance Department within ten (IO) calendar days. This form itemizes all expenses associated with the event. All original receipts must be attached, as well as a copy of the conference schedule and/or itinerary. Electronic receipts will also be accepted.

2. Expense forms must document that the expenses in question meet the requirements of this policy.

3. If an elected official has lost a receipt for a travel-related item, a memo is required. The memo must include the following:

a. Detailed explanation, such as time, activity, and reason for losing the receipt.

b. Include all receipt information such as place, amount, date, and description of item.

c. The elected official must sign the memo.

D. INTERPRETATION OF POLICY

The intent of the policy is to provide guidelines to cover the necessary costs associated with elected officials attending conferences and meetings related to, and for the benefit of, the City of Temecula in the most cost-effective manner. Fiscal prudence should prevail in the interpretation of the policy as it is impossible to cover every unique situation that may arise. Any disagreement as to how the policy should be applied should be referred to the City Manager.

E. VIOLATIONS OF THIS POLICY

Use of public resources or falsifying expense reports in violation of this policy may result in any of the following: 1) loss of reimbursement privileges; 2) a demand for restitution to the City of Temecula; 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities; 4) civil penalties up to the maximum allowable by law; 5) prosecution for misuse of public resources.

POLICY NO. 18

APPOINTMENT TO INTERNAL/ EXTERNAL COMMITTEES

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Appointment to Internal/External Committees**
Policy No.	**18**
Approved:	**November 14, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth the guidelines affiliated with the appointment of Council Members to internal and external committees.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

Appointments to Committees
The City of Temecula has several internal committees – ad hoc and standing – on which the City Council serve. Under the Brown Act, which is codified in the Government Code, a "standing committee" is one that has "continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution or formal action of a legislative body." An "ad hoc committee" is one that has limited subject matter jurisdiction, typically one topic, and meets for such time as to complete a limited purpose. The Brown Act applies to all standing committee meetings and relevant staff ensure noticing requirements are met.

Appointments to external committees may include Western Riverside County Regional Conservation, Riverside County Habitat Conservation Agency Board, Riverside County Transportation Commission, Riverside Transit Agency, Western Riverside Council of Governments, League of California Cities, National League of Cities, and Pechanga Tribal Council Liaison among others.

The City Council makes appointments to its internal and external committees in January of each year. Two members are publicly appointed to each committee by a majority vote of the Council. Members may be appointed based on interest, continuity, availability, and/or any other reason. Members serve for the full calendar year in which they are appointed. In the event of a vacancy, another member may be appointed by majority vote of the City Council when the vacancy occurs.

Stipends for Committees
There are no stipends provided by the City of Temecula for any committee service on internal ad hoc and/or standing committees. For external committees, the corresponding regional agency (i.e., Riverside Transit Agency, Riverside Conservation Authority, etc.) may provide a stipend per month and/or meeting for service on their respective committee. Such appointments and related stipends are reportable pursuant to Fair Political Practices Commission Regulation 18702.5. The City Clerk's office is responsible for posting Form 806 listing paid appointed positions as required pursuant to law.

APPENDIX A

SUMMARY OF
RALPH M. BROWN ACT

2023

Brown Act HANDBOOK

Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

- Summary and Discussion of the Major Provisions of the Brown Act
- Text of the Ralph M. Brown Act
- Updated including changes effective January 1, 2023

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INTRODUCTION

This Handbook is prepared to provide you with a summary of the major provisions of California's open meeting law for local governments – the Ralph M. Brown Act, including rules about calling and holding various types of meetings and closed sessions, as well as guidelines for how to avoid serial meetings. The second part contains the complete text of the Brown Act. This Handbook is designed for local government officials and staff and we hope you will find it useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact us.

Richards, Watson & Gershon

PART ONE:

SUMMARY OF THE MAJOR PROVISIONS AND REQUIREMENTS OF THE RALPH M. BROWN ACT

Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

The Ralph M. Brown Act, more commonly known as the "Brown Act," is California's "sunshine" law for local government. The Brown Act is found in the California Government Code commencing with Section 54950. In a nutshell, the Brown Act requires local government business to be conducted at open and public meetings, except in certain limited situations. This Handbook briefly summarizes and discusses the major provisions of the Brown Act.

I. APPLICATION OF BROWN ACT TO "LEGISLATIVE BODIES"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council or the board of supervisors) and any commission, committee, board, or other body of the local agency, whether permanent or temporary, decision-making or advisory, that is created by formal action of a legislative body. § 54952(a)-(b).

Standing committees of a legislative body, that have either "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body, are also subject to the requirements of the Brown Act. Some common examples include the finance, personnel, or similar policy subcommittees of a legislative body. Standing committees exist to make routine, regular recommendations on a specific subject matter. These committees continue to exist over time and survive resolution of any one issue or matter. They are also a regular part of the governmental structure.

The Brown Act does not apply to "ad hoc" committees comprised solely of members of the legislative body that are less than a quorum of the body, provided these committees do not have a "continuing subject matter jurisdiction," or a meeting schedule fixed by formal action of the legislative body. Such ad hoc committees are purely advisory; they generally serve only a limited or single purpose, are not perpetual, and are dissolved when their specific task is completed.

Advisory and standing committees, but not ad hoc committees, are required to have agendas, and to have their agendas posted at least 72 hours in advance of their meetings. If this is done, the meeting is considered to be a regular meeting for all purposes. § 54954(a). If the agenda is not posted at least 72 hours in advance, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply, as discussed later in Section VIII of this Handbook.

The governing boards of some private corporations, limited liability companies, and private entities may be subject to the Brown Act under certain circumstances. A private entity's governing board constitutes a legislative body within the meaning of the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the legislative body; or (ii) the private entity receives funds from a local agency and its governing board includes a member of the legislative body of the local agency who was appointed by the legislative body to the governing board as a full voting member. § 54952(c). Additionally, charter schools and entities managing charter schools may also be subject to the Brown Act. Educ. Code, § 47604.1(b)(1).

The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency even before they assume the duties of office. § 54952.1. Under this provision, the statute is applicable to newly elected, but not-yet-sworn-in, members of the legislative body.

II. DEFINITION OF "MEETING"

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act defines the term "meeting" very broadly in § 54952.2(a), and encompasses almost every gathering of a majority of legislative body members, including:

> "[A]ny congregation of a majority of the members of a legislative body at the same time and location, including a teleconference, . . . to **hear, discuss, deliberate, or take action** on any item that is within the subject matter jurisdiction of the legislative body."

In plain English, this definition means that a meeting is any gathering of a majority of council members, board of directors or other applicable legislative body, to hear, discuss or deliberate any item of local agency business or potential local agency business. It is important to emphasize that a meeting occurs if a majority gathers to hear, discuss or deliberate on a matter and not just voting or taking action on the issue.

III. EXCEPTIONS TO MEETING REQUIREMENT

There are six types of gatherings that are not subject to the Brown Act. We commonly refer to these exceptions as: (1) the individual contact exception; (2) the seminar or conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of the members of a legislative body falls within one of the exceptions discussed below, even if a majority of members are merely in the same room listening to a discussion of local agency business, they will

be participating in a meeting within the meaning of the Brown Act that requires notice, an agenda, and a period for public comment.

A. The Individual Contact Exception

Conversations, whether in person, by telephone, video conferencing, or other means, between a member of a legislative body and any other person do not constitute a meeting under the Brown Act. § 54952.2(c)(1). However, such contacts may constitute a "serial meeting" (discussed below) in violation of the Brown Act, if the individual also makes a series of individual contacts with other members of the legislative body, and communications with these other members are used to "discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body." § 54952.2(a).

B. The Seminar or Conference Exception

Attendance by a majority of the legislative body at a seminar, conference or similar educational gathering is generally exempted from Brown Act requirements. § 54952.2(c)(2). However, in order to qualify under this exception, the seminar or conference must be open to the public and must involve issues of general interest to the public or to local agencies. Attendance at a California League of Cities or California Contract Cities seminar is an example of an educational gathering that fulfills these requirements. However, as with many of the exceptions, this exception will not apply if a majority of legislative body members discuss among themselves items of specific business relating to their own local agency other than as part of the scheduled program.

C. The Community Meeting Exception

The community meeting exception allows a majority of legislative body members to attend privately sponsored neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings at which issues of local interest are discussed. § 54952.2(c)(3). In order to fall within this exception, however, the community meeting must satisfy specific criteria. First, the community meeting must be "open and publicized." Therefore, a homeowners' association meeting restricted to the residents of a particular development and only publicized to those residents cannot be attended by a majority of the legislative body without following the Brown Act requirements because the meeting does not qualify for the exception. And again, for those meetings that fall within the community meeting exception, a majority of legislative body members cannot discuss among themselves items of business of their own local agency other than as part of the scheduled program.

D. The Other Legislative Body Exception

This exception allows a majority of members of any legislative body to attend open and noticed meetings of other legislative bodies of their local agency, or of another local agency, without treating such attendance as a meeting of the body. § 54952.2(c)(4).

Of course, the legislative body members are prohibited from discussing items of business of their local agency among themselves other than as part of the scheduled meeting.

E. The Social or Ceremonial Occasion Exception

As has always been the case, the Brown Act does not apply to attendance by a majority of the legislative body members at purely social or ceremonial occasions. § 54952.2(c)(5). This exception only applies if a majority of legislative body members do not discuss among themselves items of business of their local agency.

F. The Standing Committee Exception

The standing committee exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the committee without making the gathering a meeting of the full legislative body itself. § 54952.2(c)(6). If a majority of the legislative body is created by the attendance of the additional members, the legislative body members who are not members of the standing committee may attend only as "observers." This means that the noncommittee members of the legislative body should not speak at the standing committee's meeting, sit in their usual seat on the dais, or otherwise participate in the meeting. It is generally recommended that, if a standing committee meeting is likely to be attended by other legislative body members, then the meeting should be agendized as a meeting of the whole legislative body. This will allow full participation by all members of the legislative body.

IV. PERMITTED LOCATIONS OF MEETINGS AND TELECONFERENCING

A. Permitted Locations of Meetings

The Brown Act generally requires all meetings of a legislative body to occur within the boundaries of the local agency. § 54954(b). There are limited exceptions to this rule, however, such as allowing meetings with a legislative body of another local agency in that agency's jurisdiction. Meetings held outside of a local agency's boundaries pursuant to an exception still must comply with agenda and notice requirements, as discussed below.

B. Teleconferencing

The role of "teleconferencing," or using telephonic and/or video technology in public meetings was expanded significantly during the COVID-19 pandemic.

Because the Brown Act relies on physical, in-person meetings as the primary means to achieve its goals of public participation and transparency, the law has traditionally limited a local agency's ability to use teleconferencing to hold public meetings.

Generally, teleconferencing may only be used by members of a legislative body as a way to participate fully in the meeting from remote locations. § 54953(b). If one or more members participate in a meeting via teleconferencing, the following requirements apply to that meeting: (1) the remote location must be connected to the main meeting location by telephone, video or both; (2) the notice and agenda of the meeting must identify the remote location; (3) the remote location must be posted and accessible to the public; (4) all votes must be by roll call; and (5) the meeting must comply with the Brown Act, which includes allowing participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. These teleconferencing rules only apply to members of the legislative body. Staff members, attorneys or consultants may participate remotely without following the posting and public access requirements of the teleconferencing rules.

On March 17, 2020, Governor Newsom issued Executive Order ("EO") N-29-20, which temporarily relaxed these traditional teleconferencing requirements in response to the COVID-19 pandemic. That order expired on September 30, 2021, but recent amendments to the Brown Act, described below, now provide other alternatives to the standard teleconferencing rules under specific conditions. The Brown Act's standard teleconferencing rules described in the preceding paragraph remain available in lieu of the alternatives described below.

1) Assembly Bill 361

AB 361 built upon EO N-29-20 to provide a statutory basis in the Brown Act for relaxed teleconferencing requirements during the COVID-19 declared emergency. As described below, however, there must be a proclaimed state of emergency for an agency to rely on AB 361. Because The Governor has announced that the current COVID-19 state of emergency will end on February 28, 2023[1], agencies will be unable to rely on AB 361 after that date absent a new emergency declaration.

By its terms, AB 361 will sunset on January 1, 2024. § 54953(f). Until then, AB 361 authorizes local agencies to continue meeting remotely *during a state of emergency proclaimed by the Governor* without following the Brown Act's standard teleconferencing provisions, including the requirement that meetings be conducted in physical locations, if either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. § 54953(e)(1)(A)-(C). "State of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act.

AB 361 generally requires legislative bodies to make remote public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe

[1] *Governor Newsom to End the COVID-19 State of Emergency* (Oct. 17, 2022), available at: https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/ (as of Dec. 7. 2022).

and to address the local legislative body, and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Brown Act. AB 361 provides the following procedures and requirements for conducting remote meetings as follows:

1. Public Comment Opportunities in Real Time: A legislative body that meets remotely pursuant to AB 361 must allow members of the public to access the meeting via a call-in option or an internet-based service option, and the agenda for the remote meeting must provide an opportunity for members of the public to directly address the body in real time. Although the agency may still ask for public comments to be submitted in advance, the agency cannot require public comments to be submitted in advance of the meeting. § 54953(e)(2)(E). Agencies may not close a public comment period until members of the public are given the opportunity to register and the time for that comment period has elapsed, whether it is for a specific agenda item or a general comment period. If an agency does not provide a timed public comment period, but takes public comment separately on each agenda item, it must allow a reasonable amount of time per agenda item to allow members of the public the opportunity to provide public comment, including time to register or "otherwise be recognized for the purpose of providing public comment." § 54953(e)(2)(G)(ii).

2. No Action During Disruptions: In the event of a disruption that prevents the local agency from broadcasting the remote meeting, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, AB 361 prohibits the legislative body from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored. § 54953(e)(2)(D).

3. Periodic Findings: To continue meeting remotely pursuant to AB 361, an agency must make periodic findings that: (1) the body has reconsidered the circumstances of the declared emergency; and (2) the emergency impacts the ability of the body's members to meet safely in person, or state or local officials continue to impose or recommend measures to promote social distancing. § 54953(e)(3). These findings must be made not later than 30 days after teleconferencing for the first time pursuant to AB 361, and every 30 days thereafter. We recommend that after the agency makes these findings for the first time, it place on the agenda (as a placeholder) "reconsideration" of the findings every month thereafter. § 54953(e)(3).

2) Assembly Bill 2449

AB 2449 provides alternate authority, separate from both the traditional Brown Act teleconferencing requirements and the relaxed teleconferencing requirements during declared emergencies under AB 361. The provisions of AB 2449 are effective for a period of three years beginning January 1, 2023 and ending January 1, 2026.

AB 2449 requires at least a quorum of the legislative body to participate in person from a singular, physical location clearly identified on the agenda, open to the public, and

situated within the boundaries of the territory over which the agency exercises jurisdiction. § 54953(f)(1). AB 2449 allows other individual members to participate remotely without posting agendas at all teleconference locations, identifying all such locations in the agendas, or making each teleconference location open to the public in two specified circumstances: (1) "just cause" or (2) "emergency circumstances."

"Just cause" means any of the following: (A) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (B) a contagious illness that prevents a member from attending in person; (C) a need related to a physical or mental disability not otherwise accommodated by the agency's procedures for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the Americans with Disabilities Act; or (D) travel while on official business of the legislative body or another state or local agency. § 54953(j)(2).

To participate remotely for just cause, a member must notify the legislative body "at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause." This notification must include a general description of the circumstances relating to their need to appear remotely at the given meeting.

"Emergency circumstances" means a physical or family medical emergency that prevents a member from attending a meeting in person. § 54953(j)(1).

To participate remotely due to emergency circumstances, the member must request the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body must take action to approve the request. § 54953(f)(2)(A)(ii). If the legislative body does not approve the request, the member may not participate via teleconference under AB 2449 at that meeting other than as a member of the public. The legislative body must request a general description of the circumstances relating to the member's need to appear remotely at the given meeting. A general description need not exceed 20 words and does not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law. A legislative body member should request to participate remotely at a meeting due to emergency circumstances as soon as possible, and a separate request is required for each meeting in which they seek to participate remotely. § 54953(f)(2)(A)(i)(I). The legislative body may approve such a request by a majority vote. §§ 54953(f)(2)(A)(i)(II); 54954.2(b)(4). If the request is received at least 72 hours before a regular meeting, the legislative body's action on the request should be included on the agenda. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting, the legislative body may take action at the beginning of the meeting. § 54953(f)(2)(A)(i)(II).

There are strict limits on how often AB 2449 may be used for individual members. For "just cause," legislative members are only allowed to participate remotely up to two meetings per calendar year. Otherwise, legislative members may not participate solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the legislative body within a calendar

year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

At the meeting before any action is taken, members of the legislative body participating remotely pursuant to AB 2449 must publicly disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals. § 54953(f)(2)(B). Members must also participate through both audio and visual technology so that the public can remotely hear and visually observe them. § 54953(f)(2)(C).

Local agencies relying on AB 2449 must follow certain requirements for noticing and conducting remote meetings similar to those required by AB 361. Meeting notices and agendas must identify the means by which members of the public may access the meeting and offer public comment. § 54953(f)(1)(B). Meeting agendas must identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in option, via an internet-based service option, and at the in-person location of the meeting. § 54953(f)(1)(C). In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body may take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. § 54953(f)(1)(D). The legislative body may not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. § 54953(f)(1)(E).

V. ADA COMPLIANCE

Pursuant to Section 54953.2, all meetings of a legislative body, other than closed session meetings or parts of meetings involving a closed session, are required to be held in a location and conducted in a manner that complies with the Americans with Disabilities Act of 1990.

However, local agencies must ensure that remote meetings are conducted in a manner that allows persons with a disability to participate to the fullest extent possible. Additionally, if requested, the agenda and documents in the agenda packet shall be made available in alternative formats to persons with a disability. § 54954.1. 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 meeting. § 54954.2.

VI. SIMULTANEOUS OR SUCCESSIVE MEETINGS

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 successively, only if a clerk or a member of the convened legislative body announces the following prior to convening the simultaneous or successive meeting:

1) There is a subsequent legislative body;

2) The amount of compensation or stipend, if any, each member may receive as a result of the multiple meetings; and

3) The form of the compensation or stipend that will be provided.

The amount of compensation and stipend is not required to be announced if it is listed in a statute without additional compensation authorized by the local agency, and in any case, the announced compensation must not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of his or her official duties. § 54952.3.

VII. SERIAL MEETINGS

In addition to regulating all gatherings of a majority of the members of a legislative body, the Brown Act also addresses certain contacts between individual members of the legislative body. On the one hand, the Brown Act specifically provides that nothing in the Act is intended to impose requirements on individual contacts or conversations between a member of a legislative body and any other person. § 54952.2(c)(1). This provision even applies to individual contacts between two members of the legislative body (the individual contact exception to the "meeting" described above). Despite this exception, however, the Brown Act prohibits "serial meetings." § 54952.2(b)(1).

A serial meeting is a series of meetings or communications, either in person or by other means, between individual members of the legislative body in which ideas are exchanged among a majority of a legislative body regarding an item of business that is within the subject matter jurisdiction of the legislative body. A serial meeting can occur even though a majority of legislative body members never gather in a room at the same time. For example, an email response concerning an agency's business circulating among a majority of the members of the legislative body, such as "reply to all," could be considered a serial meeting. A serial meeting typically occurs in one of two ways. The first is when a staff member, a legislative body member or some other person individually contacts a majority of legislative body members and shares ideas among the majority (e.g., "I've talked to members A and B and they will vote 'yes.' Will you?"). Alternatively,

member A calls member B, who then calls member C and so on, until a majority of the legislative body has discussed or deliberated or has taken action on the item of business.

The prohibition against serial meetings does not, however, prohibit communications between staff and legislative body members for the purpose of answering questions or providing information regarding a matter that is within the subject matter jurisdiction of the local agency, as long as the staff person does not communicate with other members of the legislative body, the comments or positions of any other member of the legislative body. § 54952.2(b)(2).

Social media interactions between or among members of a legislative body can also raise serial meeting concerns. However, the prohibition against serial meetings does not prevent communication between members of a legislative body and members of the public on internet-based social media platforms to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that: (i) a majority of the members of the legislative body do not use the social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body, and (ii) members of the legislative body do not respond directly to any communication on a social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body. § 54952.2(b)(3).

Observing the following guidelines can avoid inadvertent violation of the serial meeting rule.

A. Contacts with Staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. Originally, the California Court of Appeal held that staff briefings of individual city council members do not constitute an illegal serial meeting under the Brown Act unless there was additional evidence that: (1) staff acted as a personal intermediary for other members of the legislative body; and (2) the meetings led to a collective concurrence among members of the legislative body. Following that decision, the state legislature amended Government Code Section 54952.2 in 2008, effective in 2009, to further clarify that staff briefings of individual city council members for the purpose of answering questions or providing information regarding an item of business do not constitute an illegal serial meeting under the Brown Act as long as a staff person does not communicate the comments or positions of a member of the legislative body to other members. Staff briefings must therefore be handled carefully. To avoid having a staff briefing become a serial meeting:

- Staff briefings of members of the legislative body should be "unidirectional" when done on an individual basis for a majority of the legislative body. This means that information should flow from staff to the member, and the member's participation should be limited to asking questions and acquiring information. Otherwise, if multiple members separately give staff direction

thereby causing staff to shape or modify their ultimate recommendations in order to reconcile the views of a majority of the members, a violation might occur.

- A legislative body member should not ask staff to describe the views of any other members of the legislative body, and staff should not volunteer those views if known.

- Staff may present their views to a legislative body member during an individual contact, but staff should not ask for that member's views unless it is absolutely clear that staff is not discussing the matter with a majority of the legislative body.

B. Contacts with Constituents, Developers and Lobbyists

A constituent, developer or lobbyist can also inadvertently become an intermediary among a majority of members of a legislative body thereby creating an illegal serial meeting in violation of the Brown Act. Such person's unfamiliarity with the requirements of the Brown Act aggravate this potential problem because they may expect a legislative body member to be willing to commit to a position in a private conversation in advance of a meeting. To avoid violations arising from contacts with constituents, developers and lobbyists:

- State the ground rules "up front." Ask if the person has talked, or intends to talk, with other members of the legislative body about the same subject. If the answer is "yes," then make it clear that the person should not disclose the views of other legislative body member(s) during the conversation.

- Explain to the person that you will not make a final decision on a matter prior to the meeting. For example: "State law prevents me from giving you a commitment outside a noticed meeting. I will listen to what you have to say and give it consideration as I make up my mind."

- Do more listening and asking questions than expressing opinions. If you disclose your thoughts about a matter, counsel the person not to share them with other members of the legislative body.

- Be especially careful with discussions about matters involving "quasi-judicial" land use decisions such as subdivision maps, site development plans, conditional use permits or variances. Consult with your city attorney or legal counsel before the meeting in order to avoid any potential problems involving illegal prejudice against the project or illegally receiving evidence about the project outside of the administrative record.

C. Contacts with Fellow Members of the Same Legislative Body

Direct contacts concerning local agency business with fellow members of the same legislative body – whether through face-to-face or telephonic conversations, notes, letters, online exchanges, email with or to staff members – are the most obvious means by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of local agency business with another member of that legislative body outside of a meeting; as long as the communication does not involve a majority of the legislative body, no "meeting" has occurred. There is, however, always the risk that one participant in the communication will disclose the views of the other participant to a third or fourth legislative body member, creating the possibility of a discussion of an item of business outside a noticed public meeting. Therefore, avoid discussing city business with a majority of the members of your legislative body and communicating the views of other legislative body members outside a meeting.

D. Contacts on Social Media

Social media engagement can also inadvertently lead to concerns of creating an illegal serial meeting in violation of the Brown Act. The Brown Act was previously silent regarding social media and its use by members of a legislative body, leading to uncertainty as to whether certain uses of social media could result in unintended violations of the Brown Act. Assembly Bill 992, passed in 2020 and effective January 1, 2021, amended certain provisions of the Brown Act until January 1, 2026 to clarify allowable uses of social media under the Act.

A member of a legislative body may engage in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body. However, a majority of the members of the legislative body cannot use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. Further, a member of the legislative body is prohibited from responding directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body. § 54952.2(b)(3)(A). Unlike other serial meeting restrictions that are invoked when there are contacts of a majority of the legislative body, this provision is triggered when there is interaction between as little as two members of a body. For purposes of these provisions, such interaction includes commenting or using digital icons that express reactions to communications made by other members of the legislative body. § 54952.2(b)(3)(B)(i). Thus, it is now clear that "liking" a post or using a digital icon is considered a discussion under the Brown Act.

Therefore, to avoid violations arising from social media engagement, members of a legislative body should avoid interacting on social media platforms with any other

members of their legislative body regarding matters within the subject matter jurisdiction of the legislative body.

These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquiring important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act's goal of achieving open government. If you have questions about compliance with the Act in any given situation, you should seek advice from your city attorney or legal counsel. Adherence to the foregoing guidelines is not a substitute for securing advice from your legal counsel.

VIII. NOTICE, AGENDA AND REPORTING REQUIREMENTS

A. Time of Notice and Content of Agenda

Two key provisions of the Brown Act which ensure the public's business is conducted openly are the requirements that legislative bodies publicly post agendas prior to their meetings, (§§ 54954.2, 54955, 54956 and 54957.5) and that no action or discussion may occur on items or subjects not listed on the posted agenda (§ 54954.2). The limited exceptions to the rule against discussing or taking action not on a posted agenda are discussed further below.

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings. § 54954(a). A "regular" meeting is a meeting that occurs on the legislative body's established meeting day. Generally, agendas for a regular meeting must be publicly posted 72 hours in advance of the meeting in a place that is freely accessible to the public.

Agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting. § 54954.2(a). The description should inform the public of the "essential nature" of the matter, but need not exceed 20 words. *San Diegans for Open Government v. City of Oceanside*, 4 Cal. App. 5th 637 (2016).

Courts will not uphold a challenge to the sufficiency of an agenda item description when the description provides fair notice of what the agency will consider. The *San Diegans for Open Government* case provides an example of a sufficient agenda description that provides fair notice. In *San Diegans for Open Government*, the Oceanside City Council approved a subsidy agreement with a hotel developer using the following agenda item description:

> Adoption of a resolution to approve: 1. An Agreement Regarding Real Property (Use Restrictions) between the City of Oceanside and SD Malkin Properties Inc. to guarantee development and use of the property as a full service resort consistent with the entitlements for the project; 2. An Agreement Regarding Real Property to provide a

> mechanism to share Transient Occupancy Tax (TOT) generated by the Project; 3. A Grant of Easement to permit construction of a subterranean parking garage under Mission Avenue; 4. A report required by AB 562 prepared by Paul Marra of Keyser Marston and Associates documenting the amount of subsidy provided to the developer, the proposed start and end date of the subsidy, the public purpose of the subsidy, the amount of the tax revenue and jobs generated by the project; and 5. A License Agreement to permit construction staging for the project on a portion of Lot 26.

The court ruled that this agenda description complied with the requirements of Government Code Section 54954.2 because the agenda description expressly gave the public notice that the council would consider a fairly substantial development of publicly owned property as a hotel, that the City would share the transient occupancy tax generated by the project and that the transaction would involve a subsidy by the City. Additional information, while helpful, was not necessary to provide fair notice of the essential nature of the action under state law. The court found that the language of the agenda, considered as a whole, provided more than a "clue" that the City planned to provide the developer with a substantial and ongoing financial subsidy in exchange for the project.

In contrast, in *Hernandez v. Town of Apple Valley*, 7 Cal. App. 5th 194 (2017), the court held that the Apple Valley Town Council's agenda description was insufficient. There, the Apple Valley Town Council adopted three resolutions that called for a special election related to an initiative to adopt a commercial specific plan and the filing of arguments and rebuttal arguments for and against the initiative. In addition, the Town Council adopted a Memorandum of Understanding ("MOU") that authorized the acceptance of a gift from an interested party, Wal-Mart, to pay for the special election. The agenda description for the matter read "Wal-Mart Initiative Measure" and included a recommendation for action that read "[p]rovide direction to staff."

The court reiterated that the Brown Act requires that each item of business be placed on the agenda. Specifically, the court highlighted that nothing in the agenda description, or even in the agenda packet, indicated that the Town Council was going to consider an MOU to accept a gift from Wal-Mart to pay for a special election to pass the initiative. The court concluded that the City violated the Brown Act by omitting the MOU from the agenda description because the omission meant that the plaintiff was given no notice of the item of business.

Furthermore, agendas should make clear whether items may be acted on or whether they are informational only. Thus, if an agenda for a meeting states that the legislative body will only "discuss" an item, the legislative body may not take an "action" on that item.

Agendas must also be posted on the local agency's website, if one exists, for City Council meetings, and meetings of any other legislative body where some members are City Council members and are compensated for their appearance. While the language of the 72 hour posting requirement appears absolute, the California Attorney General

opined that technical difficulties, such as a power failure, cyber-attack or other third-party interference that prevents a local agency from posting its agenda on its website for the full 72 hours will not necessarily preclude the legislative body from lawfully holding its meeting. 99 Ops. Cal. Atty. Gen. 11 (2016). Whether a public meeting may continue as scheduled requires a fact specific analysis that turns on whether the local agency has otherwise "substantially complied" with the Brown Act's agenda posting requirements by properly posting a physical agenda and making other "reasonably effective efforts" (such as making the agenda available on social media or some other alternative website) to notify the public of the meeting.

Please note that the proposed adoption of a CEQA exemption or approval of a CEQA document, such as an environmental impact report or a negative declaration, by a Planning Commission or a City Council is a distinct item of business separate from the item approving the project and must be expressly described in an agenda. *G.I. Industries v. City of Thousand Oaks* (2022) 84 Cal.App.5th 814.

A "special" meeting is a meeting that is held at a time or place other than the time and place established for regular meetings. For special meetings, the "call and notice" of the meeting and the agenda must be posted in a publicly accessible area, including in some cases on the local agency's website, at least 24 hours prior to the meeting. § 54956(a). Additionally, each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as facsimile, email or U.S. mail) at least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and, if they have, then that notice must be given at the same time notice is provided to members of the legislative body.

An "emergency" meeting may be called to address certain emergencies, such as a terrorist act or crippling disaster, without complying with the 24-hour notice requirement. Certain requirements apply for notifying the press and for conducting closed sessions as part of those meetings and except as specified, all other rules governing special meetings apply. § 54956.5.

Both regular and special meetings may be adjourned to another time. Notices of adjourned meetings must be posted on the door of the meeting chambers where the meeting occurred within 24 hours after the meeting is adjourned. § 54955. If the adjourned meeting occurs more than five days after the prior meeting, a new agenda for that adjourned meeting must be posted 72 hours in advance of the adjourned meeting. § 54954.2(b)(3).

The Brown Act requires local agencies to mail the agenda or the full agenda packet to any person making a written request no later than the time the agenda is posted or is delivered to the members of the body, whichever is earlier. Additionally, a local agency with an internet website must send a website link to or a copy of the agenda or the full agenda packet by email, if a person requests that the documents be sent by email. A local agency may charge a fee to recover its costs of copying and mailing. Any person may make a standing request to receive these materials, in which event the request must

be renewed annually. Failure by any requestor to receive the agenda does not constitute grounds to invalidate any action taken at a meeting. § 54954.1.

B. Action and Discussion on Non-agenda Items

The Brown Act also ensures the public's business is conducted openly by restricting a legislative body's ability to deviate from posted agendas. The statute affords a legislative body limited authority to act on or discuss non-agenda items at regular meetings, but forbids doing so at special meetings.

As a general rule, a legislative body may not act on or discuss any item that does not appear on the agenda posted for a regular meeting. § 54954.2(a)(3). This rule does not, however, preclude a legislative body from acting on a non-agenda item that comes to the local agency's attention subsequent to the agenda posting which requires immediate action. § 54954.2(b)(2). In order to utilize this exception, the legislative body must make findings of both components of the exception by a two-thirds vote of those present (by unanimous vote if less than two-thirds of the body is present). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required. In addition, an item not appearing on an agenda may be added if the legislative body determines by a majority vote that an emergency situation exists. § 54954.2(b)(1). For purposes of this exception, the term "emergency situation" refers to work stoppages or crippling disasters that severely impair public health, safety, or both.

Assembly Bill 2449, discussed above, also allows a legislative body act at the beginning of a meeting on a request from a member to participate in a meeting remotely due to emergency circumstances pursuant to AB 2449 if the member's request to participate remotely does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. § 54953(f)(2)(A)(i)(II); § 54954.2(b)(4). The legislative body may approve such a request by a majority vote of the legislative body. § 54954.2(b)(4).

In addition to the general exceptions discussed above, a legislative body may also discuss non-agenda items at a regular meeting under the following five additional exceptions:

- Members of the legislative body or staff may briefly respond to statements made or questions posed by persons during public comment periods;
- Members of the legislative body or staff may ask a question for clarification, make a brief announcement or make a brief report on their own activities;
- Members of the legislative body may, subject to the procedural rules of the body, provide a reference to staff or other resources for factual information;
- Members of the legislative body may, subject to the procedural rules of the body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and

- Members of the legislative body may, subject to the procedural rules of the body, take action to direct staff to place a matter of business on a future agenda.

Therefore, spending a few minutes to discuss whether a matter should be placed on a future agenda or asking staff procedural questions is permissible. *Cruz v. City of Culver City*, 2 Cal.App. 5th 239 (2016). The legislative body may not, however, discuss non-agenda items to any significant degree. This means there should not be long or wide-ranging question and answer sessions on non-agenda items between the legislative body and the public or between the legislative body and staff. It is important to follow these exceptions carefully and construe them narrowly to avoid tainting an important and complex action by a non-agendized discussion of the item.

The Brown Act contains even more stringent regulations to restrict action on and discussion of non-agenda items at special meetings. In particular, the statute mandates that only business that is specified in the "call and notice" of the special meeting may be considered by the legislative body. § 54956. Notwithstanding, a special meeting may not be called to discuss compensation of a local agency executive. § 54956(b).

C. Reporting of Actions

The Brown Act mandates the public reporting of individual votes or abstentions by members of legislative bodies on any given motion or action. This requirement may be satisfied in most situations by reporting the individual vote or abstention of each member in the minutes of a meeting. § 54953(c). The Brown Act also requires that the legislative body orally report a summary of recommendations made with respect to the salary, salary schedule or compensation paid to a local agency executive. The legislative body must issue the report at the same meeting in which the final action on compensation is being considered. § 54953(c)(3).

IX. PUBLIC PARTICIPATION

A. Regular Meetings

The Brown Act mandates that every agenda for a regular meeting provide an opportunity for members of the public to directly address the legislative body on any matter that is within the subject matter jurisdiction of the legislative body. § 54954.3(a). In addition, the Brown Act requires the legislative body to allow members of the public to comment on any item on the agenda either before or during the body's consideration of that item. § 54954.3(a). Also, although not required under the Brown Act, local agencies may consider reading written comments received into the public record by the city clerk, or his or her designee, subject to reasonable time and content limitations imposed in accordance with the requirements outlined below in Section C (titled Limitations on the Length and Content of Public Comments).

Some local agencies accomplish both public comment requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on both agenda and non-agenda items. Others provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda. Either method is permissible, though public comment on public hearing items must be taken during the hearing.

The Brown Act allows a legislative body to preclude public comments on an agenda item in one limited situation sometimes referred to as the "committee exception" – where the item was considered by a committee, composed solely of members of the body, that held a meeting where public comments on that item were allowed. So, if the legislative body has standing committees (which are required to have agendized and open meetings with an opportunity for the public to comment on agenda items) and the committee has previously considered an item, then at the time the item comes before the full legislative body, the body may choose not to take additional public comments on that item. However, if the version presented to the full legislative body is different from the version presented to, and considered by, the committee, then the public must be given another opportunity to speak on that item at the meeting of the full body. § 54954.3(a).

B. Public Comments at Special Meetings

The Brown Act requires that agendas for special meetings provide an opportunity for members of the public to address the legislative body concerning any item listed on the agenda before or during the body's consideration of that item. § 54954.3(a). Unlike regular meetings, though, the legislative body does not have to allow public comment on non-agenda matters at a special meeting. Additionally, unlike regular meetings, the exception to the requirement for public comment opportunity for items already considered by a committee (i.e., the "committee exception") does not apply to special meetings. *Preven v. City of Los Angeles*, 32 Cal. App. 5th 925, 936 (2019).

C. Limitations on the Length and Content of Public Comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. § 54954.3(b). Typical time limits restrict speakers to three or five minutes. If an individual utilizes a translator to give testimony and simultaneous translation equipment is not used, the legislative body must allot at least twice the standard amount of time to the speaker. § 54954.3(b)(2). A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance. However, setting total time limits per item for any quasi-judicial matter, such as a conditional use permit application, is not recommended because the time restriction could violate the due process rights of those who were not able to speak to the body during the time allotted.

The Brown Act precludes a legislative body from prohibiting public criticism of the policies, procedures, programs or services of the local agency or the acts or omissions of the body. § 54954.3(c). This restriction does not mean that a member of the public may say anything during public testimony. If the topic of the public's comments falls outside the subject matter jurisdiction of the local agency, the legislative body may stop a speaker's comments if the comments are disruptive, as described below.

A legislative body also may adopt reasonable rules of decorum that preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of its meetings. § 54954.3(b). The right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the free speech rights of speakers by suppressing opinions relevant to the business of the legislative body.

Finally, in some circumstances, the use of profanity may serve as a basis for stopping a speaker. It will depend, however, upon what profane words or comments are made and the context of those comments. Therefore, no one should be ruled out of order for profanity unless the language both is truly objectionable and causes a disturbance or disruption in the proceeding.

The presiding officer of a legislative body may remove an individual from a meeting for actual disruptive behavior if they first warn the individual that their behavior is disruptive and that failure to cease their disruptive behavior could result in removal from the meeting. § 54957.95(a). Behavior is disruptive only if it actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting. § 54957.95(b)(1). Disruptive behavior may include noncompliance with the legislative body's established rules of decorum, such as speaking out of turn or exceeding established time limits on how long an individual can speak on a particular topic during public comment. § 54957.95(b)(1)(A). If the individual disrupting the meeting is using force or a true threat of force — meaning serious enough that a reasonable observer would perceive the threat to be an actual threat to use force by the person making the threat — they may be removed without a prior warning to cease their behavior. § 54957.95.

D. Additional Rights of the Public

The Brown Act grants the public the right to videotape or broadcast a public meeting, as well as the right to make a motion picture or still camera record of such meeting. § 54953.5(a). A legislative body may prohibit or limit recording of a meeting, however, if the body finds that the recording cannot continue without noise, illumination or view obstruction that constitutes, or would constitute, a disruption of the proceedings. § 54953.6.

Any audio or videotape record of an open and public meeting that is made, for whatever purpose, by or at the direction of the local agency is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act. § 54953.5(b). The local agency must not destroy the tape or film record for at least 30 days following the date of the taping or recording. Inspection of the audiotape or

videotape must be made available to the public for free on equipment provided by the local agency.

The Brown Act requires written material distributed to a majority of the body by any person to be provided to the public without delay. This rule is inapplicable, to attorney-client memoranda, the confidentiality of which was affirmed by the California Supreme Court in *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 381 (1993). However, if non-privileged material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting. § 54957.5(c).

If material related to an agenda item is distributed to a majority of the body less than 72 hours prior to an open session of a regular meeting, the writing must be made available at the same time for public inspection at a public office or location that has been designated in advance for such purpose. Each local agency must list the address of the designated office or location on the agendas for all meetings of the legislative body of that agency. § 54957.5(b). Although this Brown Act provision technically requires an agency to list the designated office address on closed session meeting agendas, it does not require an agency to make such closed session documents and materials available for public inspection.

A local agency may also post all documents made available for public inspection pursuant to Section 54957.5(b) on the agency's Internet Web site. However, a local agency may not post the writings to its website in lieu of designating a public office or location for inspection of physical copies of the documents.

There is a limited exception for certain supplemental materials to the requirement described above regarding making a writing distributed to a majority of the legislative body less than 72 hours in advance of a meeting immediately available for public inspection at a physical location. § 54957.5(b)(2)(B). The exception only applies to materials that are supplementing an initial staff report or similar document containing an executive summary and the staff recommendation, if any, relating to that agenda item that was made available for public inspection at the office or location designated at least 72 hours before the meeting. The exception allows the agency to make the materials available for public inspection the next business day commencing at least 24 hours in advance of the meeting during regular hours if the agency posts the materials on the agency's website immediately upon distributing them to the majority of the body, making it clear they relate to the item at the upcoming meeting, and the agenda posted for all meetings of the legislative body contains the agency's website address.

We recommend that local agencies implement the following procedures to comply with Section 54957.5(b):

- Place a binder at the agency's principal place of business next to the public counter agenda packet that identifies the contents as follows: "Disclosable public documents related to an open session agenda item on

the _____ Agenda Packet distributed by the [AGENCY] to a majority of the [LEGISLATIVE BODY] less than 72 hours prior to the meeting."

- On the agenda template for all meetings, there should be a standard footer or statement that indicates the following: "Any disclosable public writings related to an open session item on a regular meeting agenda and distributed by the [AGENCY] to at least a majority of the [LEGISLATIVE BODY] less than 72 hours prior to that meeting are available for public inspection at the _____ Counter at [AGENCY'S PLACE OF BUSINESS] located at [ADDRESS] and [optional] the _____ Counter at the _____ Library located at [LIBRARY ADDRESS] during normal business hours. [Optional] In addition, the Agency may also post such documents on the Agency's Website at [WEBSITE ADDRESS]." Agencies should make these documents available online to the greatest extent possible, when public buildings or facilities are temporarily closed to public access.

- On the agency's website, create a subfolder under the agenda packet folder that identifies the contents of the subfolder as follows: "Disclosable public documents related to an open session agenda item on the _____ Agenda Packet distributed by the [AGENCY] to a majority of the [LEGISLATIVE BODY] less than 72 hours prior to the meeting."

- On all documents made available for public inspection pursuant to Section 54957.5(b), make a notation of the date when distributed to at least a majority of the legislative body and placed in the binder at agency's place of business, [optional] the Library, or [optional] on the agency's Website.

- Charge customary photocopying charges for copies of such documents.

One problem left unaddressed by Section 54957.5(b) is what to do when written materials are distributed directly to a majority of the legislative body without knowledge of staff, or even without the legislative body members knowing that a majority has received it. The law still requires these materials to be treated as public records. Thus, it is a good idea for at least one member of the legislative body to ensure that staff gets a copy of any document distributed to members of the legislative body so that copies can be made for the local agency's records and for members of the public who request a copy.

X. CLOSED SESSIONS

The Brown Act allows a legislative body to convene a "closed session" during a meeting in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as "executive sessions," which is a holdover term from the statute's early days. Examples of business that may be conducted in closed session include personnel actions and evaluations, threats to public safety, labor negotiations, pending litigation, real estate negotiations and consideration of a response to an audit

report. §§ 54956.8, 54956.9, 54957, 54957.6, 54956.75. Political sensitivity of an item is not a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. For a litigation threat against a city made outside an open and public meeting to be discussed in closed session it must be included in the agenda packet made available upon request before the meeting. *Fowler v. City of Lafayette*, 46 Cal. App. 5th 360, 370 (2020), *as modified on denial of reh'g* (Mar. 11, 2020), *review denied* (July 22, 2020).

Moreover, there is a "safe harbor" for using prescribed language to describe closed session items on an agenda in that legal challenges to the adequacy of the description are precluded when such language is used. § 54954.5. This so-called "safe harbor" encourages many local agencies to use a very similar agenda format, especially in light of a California Court of Appeal ruling that a local agency substantially complied with the Brown Act's requirement to describe closed session agenda items even though the notice referred to the wrong subsection of Section 54956.9. *Castaic Lake Water Agency v. Newhall County Water District*, 238 Cal.App. 4th 1196, 1207 (2015). Audio recording of closed sessions is not required unless a court orders such recording after finding a closed session violation. § 54960.

Closed sessions may be started in a location different from the usual meeting place as long as the location is noted on the agenda and the public can be present when the meeting first begins. Moreover, public comment on closed session items must be allowed before convening the closed session.

After a closed session, the legislative body must reconvene the public meeting and publicly report certain types of actions if they were taken and the vote on those actions. § 54957.1. There are limited exceptions for specified litigation decisions and to protect the victims of sexual misconduct or child abuse. Contracts, settlement agreements or other documents that are finally approved or adopted in closed session must be provided at the time the closed session ends to any person who has made a standing request for all documentation in connection with a request for notice of meetings (typically members of the media) and to any person who makes a request within 24 hours of the posting of the agenda, if the requestor is present when the closed session ends. § 54957.1.

One perennial area of confusion is whether a legislative body may discuss the salary and benefits of an individual employee (such as a city manager) as part of a performance evaluation session under Section 54957. It may not. However, the body may designate a negotiator or negotiators, such as two members of a five-member legislative body, to negotiate with that employee and then meet with the negotiator(s) in closed session under Section 54957.6 to provide directions on salary and compensation issues. The employee in question may not be present in such a closed session. The Brown Act prohibits attendees from disclosing confidential information obtained during a closed session, unless the legislative body authorizes the disclosure. Violations can be addressed through injunctions, disciplinary action, and referral to the grand jury. § 54963.

XI. ENFORCEMENT

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, orders determining that an alleged act violated the Brown Act, orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body, and remedies for breaching closed session confidences. §§ 54960, 54960.1, 54960.2, 54963.

The procedures for claiming there was a Brown Act violation vary depending upon what the complaining party is seeking. If the complaining party is seeking to invalidate an action based on a violation of the Brown Act, the procedures for doing so are set forth in Section 54960.1, as summarized below. If the complaining party is merely seeking a determination that a Brown Act violation occurred or desires the court to impose an order preventing further violations, the procedures for doing so are set forth in Section 54960.2, also as summarized below.

Under Section 54960.1, prior to filing suit to obtain a judicial determination that an action is null and void because of an alleged Brown Act violation, the complaining party must make a written demand on the legislative body to cure or correct the alleged violation. § 54960.1(b). The written demand must be made within 90 days after the challenged action was taken. However, if the challenged action was taken in open session and involves a violation of the agenda requirements of Section 54954.2, then the written demand must be made within 30 days. § 54960.1(c)(1). The legislative body is required to cure or correct the challenged action and inform the party who filed the demand of its correcting actions or its decision not to cure or correct, within 30 days. § 54960.1(c)(2). The complaining party must file suit within 15 days after receipt of the written notice from the legislative body or if there is no written response, within 15 days after the 30-day cure period expires. § 54960.1(c). Under Section 54960.2, prior to filing suit to obtain a judicial determination that an alleged Brown Act violation occurred after January 1, 2013, the district attorney or interested person must submit a cease and desist letter to the legislative body clearly describing the legislative body's past action and the nature of the alleged violation within nine months of the alleged violation. § 54960.2(a). Second, the legislative body may respond within 30 days, including responding with an unconditional commitment to cease and desist from, and not repeat the past action that is alleged to violate the Brown Act. § 54960.2(b). If the legislative agency responds with an unconditional commitment, that commitment must be approved by the legislative body in open session at a regular or special meeting as a separate item of business not on the consent calendar and must be in substantially the form set forth in Section 54960.2(c)(1). Also, a legislative body may resolve to rescind an unconditional commitment with proper notice to the public and to each person to whom the unconditional commitment was made. § 54960.2(e). Upon rescission, the district attorney or any interested person may file an action pursuant to Section 54960(a). Finally, Section 54960.2 provides further deadlines and requirements that must be met when filing an action in connection with an unconditional commitment. § 54960.2. Note that even where a plaintiff can satisfy the threshold procedural requirements, a Brown Act violation will not automatically invalidate the action taken by the legislative body absent a

showing that the violation caused prejudice. *Martis Camp Cmty. Ass'n v. Cty. of Placer*, 53 Cal. App. 5th 569, 592 (2020).

A member of a legislative body will not be criminally liable for a violation of the Brown Act unless the member intends to deprive the public of information which the member knows or has reason to know the public is entitled to under the Brown Act. § 54959. This standard became effective in 1994 and is a different standard from most criminal standards. Until it is applied and interpreted by a court, it is not clear what type of evidence will be necessary to prosecute a Brown Act violation.

XII. CONCLUSION

The Brown Act's many rules and ambiguities can be confusing, and compliance with it can be difficult. In the event that you have any questions regarding any provision of the law, you should contact your legal counsel for advice.

PART TWO:

THE RALPH M. BROWN ACT

Updated including changes effective January 1, 2023

The Ralph M. Brown Act

Government Code §§ 54950-54963

Section 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.

Section 54950.5. Title of act

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

Section 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.

Section 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, decision making 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.

Section 54952.1. Conduct and treatment of 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.

Section 54952.2. Specified communications of legislative body of local agency prohibited outside meeting thereof

(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.

(3) (A) Paragraph (1) shall not be construed as preventing a member of the legislative body from engaging in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

(B) For purposes of this paragraph, all of the following definitions shall apply:

(i) "Discuss among themselves" means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.

(ii) "Internet–based social media platform" means an online service that is open and accessible to the public.

(iii) "Open and accessible to the public" means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval of the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules.

(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.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Section 54952.3. Simultaneous or serial order meetings authorized; Requirements; Compensation or stipend

(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.

Section 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.

Section 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.

Section 54953. Requirement that meetings be open and public; 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 otherwise applicable 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. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by roll call.

(B) The teleconferenced meetings shall be conducted 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.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. 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 subdivisions (d) and (e).

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on 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, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

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

(e) (1) The legislative body of a local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

(B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(C) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(E) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(f) (1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

(I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.

(B) The member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(C) The member shall participate through both audio and visual technology.

(3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

(g) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.

(h) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

(i) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

(2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.

(j) For the purposes of this section, the following definitions shall apply:

(1) "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.

(2) "Just cause" means any of the following:

(A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. "Child," "parent," "grandparent," "grandchild," and "sibling" have the same meaning as those terms do in Section 12945.2.

(B) A contagious illness that prevents a member from attending in person.

(C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (g).

(D) Travel while on official business of the legislative body or another state or local agency.

(3) "Remote location" means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (f), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) "State of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(6) "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.

(7) "Two-way audiovisual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

(8) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

(9) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

(k) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

Section 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.

Section 54953.2. Meetings to conform to 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.

Section 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.

Section 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 audio or video recording 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 (Division 10 (commencing with Section 7920.000) 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.

Section 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.

Section 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.

Section 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 non-adversarial 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.

Section 54954.1. Request for notice; Renewal; 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 a local agency has an internet website, the legislative body or its designee shall email a copy of, or website link to, the agenda or a copy of all the documents constituting the agenda packet if the person requests that the item or items be delivered by email. If the local agency determines it is technologically infeasible to send a copy of all documents constituting the agenda packet or a link to a website that contains the documents by email or by other electronic means, the legislative body or its designee shall send by mail a copy of the agenda or a website link to the agenda and mail a copy of all other documents constituting the agenda packet in accordance with the mailing requirements established pursuant to this section. 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.

Section 54954.2. Posting of agenda; Actions not on agenda

(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) For a meeting occurring on and after January 1, 2019 of a legislative body of a city, county, city and county, special district, school district or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii) and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district or political subdivision established by the state.

(3) 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.

(4) To consider action on a request from a member to participate in a meeting remotely due to emergency circumstances, pursuant to Section 54953, if the request does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. The legislative body may approve such a request by a majority vote of the legislative body.

(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.

(e) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Section 54954.3. Public testimony 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) (1) 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.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

(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.

Section 54954.4. Legislative findings and declarations relating to 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.

Section 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
(Paragraph (1) of subdivision (d) 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 paragraph (2) or (3) of subdivision (d) 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 paragraphs (2) to (5), inclusive of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) 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 CALIFORNIA STATE AUDITOR'S OFFICE

Section 54954.6. Public meeting on general tax or assessment; Notice

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

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

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

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

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

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

(E) Standby or immediate availability charges.

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

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

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

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

(B) The activity to be taxed.

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

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

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

(F) The 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 decision making 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.

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 or she 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.

Section 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 re-continued 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.

Section 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.

Section 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 person(s) who is 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.

Section 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.

Section 54956.7. Closed sessions 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.

Section 54956.75. Closed session for response to final draft audit report

(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.

Section 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.

Section 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.

Section 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.

Section 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 Managed Health Care 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.

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

(a) 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.

(b) 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.

(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court or administrative body exercising its adjudicatory authority, hearing officer or arbitrator.

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

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

(2) 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.

(3) 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 (2).

(4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

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

(1) 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.

(2) 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.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) 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.

(4) 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.

(5) 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 (Division 10 (commencing with Section 7920.000) of Title 1).

(g) 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 paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), 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.

(h) 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.

Section 54956.95. Closed sessions regarding liability

(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.

Section 54956.96. Disclosure of specified information in closed session of joint powers agency, Clean Power Alliance of Southern California; 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 local agency member 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 local agency member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that local agency member.

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

(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) (1) In addition to the authority described in subdivision (a), the Clean Power Alliance of Southern California or its successor entity, may adopt a policy or a bylaw or include in its joint powers agreement a provision that authorizes both of the following:

(A) A designated alternate member of the legislative body of the Clean Power Alliance of Southern California or its successor entity, who is not a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the Clean Power Alliance of Southern California or its successor entity, in lieu of a local agency member's regularly appointed member to attend closed sessions of the Clean Power Alliance of Southern California or its successor entity.

(B) All information that is received by a designated alternate member of the legislative body of the Clean Power Alliance of Southern California or its successor entity, who is not a member of the legislative body of a local agency member and that is presented to the Clean Power Alliance of Southern California or its successor entity, in closed session, shall be confidential. However, the designated alternate member may disclose information obtained in a closed session that has direct financial or liability

implications for the local agency member for which the designated alternate member attended the closed session, to the following individuals:

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

(ii) Members of the legislative body of the local agency present in a closed session of that local agency member.

(2) If the Clean Power Alliance of Southern California or its successor entity, adopts a policy or bylaw or includes in its joint powers agreement a provision authorized pursuant to paragraph (1), the Clean Power Alliance of Southern California or its successor entity, shall establish policies to prevent conflicts of interest and to address breaches of confidentiality that apply to a designated alternate member who is not a member of the legislative body of a local agency member who attends a closed session of the Clean Power Alliance of Southern California or its successor entity.

(c) 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) or (b), 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) or paragraph (1) of subdivision (b).

(d) This section shall remain in effect only until January 1, 2025 and as of that date is repealed.

Section 54956.97. Public bank; governing board or committee of governing board; closed session

Notwithstanding any provision of law, the governing board or a committee of the governing board of a public bank, as defined in Section 57600 of the Government Code, may meet in closed session to consider and take action on matters pertaining to all of the following:

(a) A loan or investment decision.

(b) A decision of the internal audit committee, the compliance committee or the governance committee.

(c) A meeting with a state or federal regulator.

Section 54956.98. Public bank; policy or bylaw; information from a closed session considered confidential

(a) For purposes of this section, the following definitions shall apply:

(1) "Shareholder, member, or owner local agency" or "shareholder, member, or owner" means a local agency that is a shareholder of a public bank.

(2) "Public bank" has the same meaning as defined in Section 57600.

(b) The governing board of a public bank may adopt a policy or a bylaw or include in its governing documents provisions that authorize any of the following:

(1) All information received by a shareholder, member or owner of the public bank in a closed session related to the information presented to the governing board of a public bank in closed session shall be confidential. However, a member of the governing board of a shareholder, member or owner 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 shareholder, member or owner local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that shareholder local agency.

(B) Other members of the governing board of the local agency present in a closed session of that shareholder, member or owner local agency.

(2) A designated alternate member of the governing board of the public bank who is also a member of the governing board of a shareholder, member or owner of the local agency and who is attending a properly noticed meeting of the public bank governing board in lieu of a shareholder, member or owner of the local agency's regularly appointed member may attend a closed session of the public bank governing board.

(c) If the governing board of a public bank adopts a policy or a bylaw or includes provisions in its governing documents pursuant to subdivision (b), then the governing board of the shareholder, member or owner of the local agency, 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 public bank governing board pursuant to paragraph (1) of subdivision (b).

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

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, 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), this chapter shall not 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. This subdivision shall not 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.

Section 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.

Section 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 (Division 10 (commencing with Section 7920.000) 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).

Section 54957.5. Agendas and other writings as public records

(a) Agendas of public meetings are disclosable public records under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be made available upon request without delay and in compliance with Section 54954.2 or Section 54956, as applicable. However, this section shall not apply to a writing, or portion thereof, that is exempt from public disclosure.

(b) (1) If a writing is a public record related to an agenda item for an open session of a regular meeting of the legislative body of a local agency and is distributed to all, or a majority of all, of the members of a legislative body of a local agency by a person in connection with a matter subject to a discussion or consideration at an open meeting of the body less than 72 hours before 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) Except as provided in subparagraph (B), a local agency shall comply with both of the following requirements:

(i) 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.

(ii) A local agency shall list the address of the office or location designated pursuant to clause (i) on the agendas for all meetings of the legislative body of that agency.

(B) A local agency shall not be required to comply with the requirements of subparagraph (A) if all of the following requirements are met:

(i) An initial staff report or similar document containing an executive summary and the staff recommendation, if any, relating to that agenda item is made available for public inspection at the office or location designated pursuant to clause (i) of subparagraph (A) at least 72 hours before the meeting.

(ii) The local agency immediately posts any writing described in paragraph (1) on the local agency's Internet Website in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(iii) The local agency lists the web address of the local agency's internet website on the agendas for all meetings of the legislative body of that agency.

(iv) (I) Subject to subclause (II), the local agency makes physical copies available for public inspection, beginning the next regular business hours

for the local agency, at the office or location designated pursuant to clause (i) of subparagraph (A).

(II) This clause is satisfied only if the next regular business hours of the local agency commence at least 24 hours before that meeting.

(c) Writings that are public records described in subdivision (b) and 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) This chapter shall not 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 7922.530, except that a surcharge shall not 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 (Division 10 (commencing with Section 7920.000) of Title 1), including, but not limited to, the ability of the public to inspect public records pursuant to Section 7922.525 and obtain copies of public records pursuant to either subdivision (b) of Section 7922.53 or Section 7922.535. This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

Section 54957.6. Closed sessions regarding employee matters

(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.

Section 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.

Section 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.

Section 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.

Section 54957.95 Removal of Disruptive Individuals

(a) (1) In addition to authority exercised pursuant to Sections 54954.3 and 54957.9, the presiding member of the legislative body conducting a meeting or their designee may remove, or cause the removal of, an individual for disrupting the meeting.

(2) Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. This paragraph does not apply to any behavior described in subparagraph (B) of paragraph (1) of subdivision (b).

(b) As used in this section:

(1) "Disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:

(A) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law.

(B) Engaging in behavior that constitutes use of force or a true threat of force.

(2)"True threat of force" means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

Section 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.

Section 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.

Section 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.

Section 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 ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, 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 that 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 that 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 that has custody and control of the recording.

(ii) An affidavit that 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) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

Section 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.

Section 54960.2 Proceeding to determine the applicability of chapter to past actions of legislative body; Conditions; Cease and desist letter

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

> To _____:
>
> The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:
>
> [Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]
>
> In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from and not repeat the challenged past action as described above.
>
> The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.
>
> Very truly yours,
>
> _____
>
> [Chairperson or acting chairperson of the legislative body]

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to

commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

Section 54960.5. Costs and attorneys' fees

A court may award court costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1 or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorneys' fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. 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 attorneys' 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.

Section 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.

Section 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.

Section 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.

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APPENDIX B

SUMMARY OF PUBLIC RECORDS LAWS

2023

Public Records Act HANDBOOK

Summary of the Major Provisions and Requirements of the Public Records Act and Related Topics

- Electronic Records
- Text of the Public Records Act
- Updated including changes effective January 1, 2023

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Table of Contents

Introduction

This Handbook, designed for City officials and staff, provides a summary of the major provisions of California's Public Records Act and related topics. Part One of the Handbook summarizes the basic provisions of the Public Records Act, including documents that are exempt from disclosure and the proper procedure for complying with the Act. Part Two highlights the unique issues raised by electronic records. Part Three contains the complete text of the Public Records Act. We hope you find this Handbook useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact our office.

Richards, Watson & Gershon

PART ONE.

COMPLIANCE WITH THE PUBLIC RECORDS ACT

COMPLIANCE WITH THE PUBLIC RECORDS ACT:

KEY QUESTIONS AND ANSWERS

> *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.*
>
> CAL. CONST. ART. I, § 3(b)(1).
>
> *In enacting [the California Public Records Act], the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.*
>
> GOV'T CODE § 7921.000.

California's Public Records Act is a key part of the philosophy that government at all levels in this State must be open and accessible to all.[1] Under the Public Records Act, a local government agency must disclose virtually any public document; only a statutory exemption or a need for confidentiality that clearly outweighs the public's right to access will legally justify withholding a public document. The purpose of this Handbook is to provide a general overview of the Public Records Act and recent amendments to it, along with a general road map for compliance. Pursuant to AB 473, operative January 1, 2023, the Public Records Act has been reorganized and recodified in new Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code. While the Public Records Act has been recodified, the substance of the Public Records Act has not materially changed. The legislature specifically noted that its intent was not to substantively change the law, and revisions to the Public Records Act are intended to be entirely nonsubstantive in effect.[2] Additionally, cases interpreting the former Code sections may be used to analyze the equivalent recodified sections. This Handbook addresses the questions most frequently asked of us by our local government clients.

[1] *Rogers v. Superior Ct. (City of Burbank)*, 19 Cal. App. 4th 469 (2 Dist. 1993).

[2] Gov't Code §7920.100

I. WHAT IS THE PUBLIC RECORDS ACT?

The Public Records Act is a California statute that affords the public the right to inspect, and obtain a copy of, most of the information retained by State and local agencies in the course of business. The Public Records Act regulates the public's access to records and sets out the specific statutory circumstances under which particular records need not be disclosed. The Public Records Act states that public records are open to inspection at all times during the office hours of a local agency.[3]

The California Constitution also guarantees that public records are open to public scrutiny.[4] It provides that a law, such as the Public Records Act, should be "broadly construed" if it furthers the people's right of access to public records, and "narrowly construed" if it limits the right of access.[5]

II. WHAT RIGHTS DOES THE PUBLIC RECORDS ACT AFFORD TO THE PUBLIC?

Under the Public Records Act, every person has the right to inspect and to obtain a copy of any identifiable public record.[6] It is irrelevant whether the person making the Public Records Act request already has possession of the public records requested.[7] The term "person" includes individuals, and various types of business entities.[8] A "person" need not be a citizen of California or of the United States to make use of the Public Records Act.[9] A local agency must supply an exact copy of the record on request, unless it is "impracticable" to make an exact copy.[10] The word "impracticable" in the Public Records Act does not necessarily refer to situations where a copying request would be "inconvenient" or time consuming to the agency. Rather, the term "impracticable" modifies the requirement that the agency provide an "exact" copy. If a requested document is subject to the Public Records Act, the agency must provide the best or most

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3 Gov't Code § 7922.525.

4 CAL. CONST. art. I, § 3(b)(1).

5 CAL. CONST. art. I, § 3(b)(2).

6 Gov't Code §§ 7922.525, 7922.530(a). A requestor inspecting a disclosable record on the agency's premises generally has the right to use their own equipment, without being charged any fees or costs, to photograph or otherwise copy or reproduce the record in a manner that does not require the equipment to make physical contact with the record. Gov't Code § 7922.530(b).

7 The motive of the requester seeking public records is immaterial; an individual already in possession of requested documents may seek the documents so he or she may publicly disseminate them without fear of liability for doing so. *Caldecott v. Superior Court*, 243 Cal. App. 4th 212, 219 (4 Dist. 2015).

8 Both cities and city attorneys have been deemed "persons" under the Act. *Los Angeles Unified School Dist. v. Superior Court (City of Long Beach)*, 151 Cal. App. 4th 759 (2 Dist. 2007) (holding that the city, as well as the city attorney, were entitled to obtain records of a school district relating to a school construction project).

9 Gov't Code § 7920.520; *Connell v. Superior Court (Intersource, Inc.)*, 56 Cal. App. 4th 601 (3 Dist. 1997).

10 Gov't Code § 7922.530(a).

complete copy of that document reasonably possible.[11] Any reasonably segregable portion must be made available after deletion of any portion exempt from disclosure.[12]

The requirements of the Public Records Act are the minimum standards which must be met by local agencies. The Public Records Act specifically provides that agencies may adopt procedures to allow greater access to records, except where the law otherwise prohibits access.[13]

The person who is the subject of a particular record does not have a specific right under the Public Records Act to prevent disclosure of any particular record.[14] Even in cases where the subject of a particular record has argued that disclosure would violate the individual right to privacy guaranteed by the California Constitution, disclosure has been compelled.[15]

III. IS THE PUBLIC RECORDS ACT RELATED TO THE FREEDOM OF INFORMATION ACT?

Persons who request access to public records frequently reference the Freedom of Information Act (the "FOIA") as the basis for their request. The FOIA is a federal statute that does not apply to local government agencies.[16] However, the Public Records Act was modeled after the FOIA, and we recommend that agencies respond to otherwise valid records requests even if the requester cites the FOIA instead of the Public Records Act.[17]

IV. TO WHICH LOCAL AGENCIES DOES THE PUBLIC RECORDS ACT APPLY?

The Public Records Act applies to all local government agencies. Under the Public Records Act, a "local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; any board, commission or agency of any of these; and

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[11] *See Rosenthal v. Hansen*, 34 Cal. App. 3d 754 (3 Dist. 1973) (holding that under the former Section 6256, an agency need not provide exact copies if doing so would be impracticable, but this does not excuse a public entity from producing the records at all).

[12] Gov't Code § 7922.525.

[13] Gov't Code § 7922.505. It is unclear whether a local public agency can, through a sunshine ordinance, seek to regulate other agencies, but such an ordinance would not override a state agency's determination on whether its internal documents were subject to disclosure. *SF Urban Forest Coal. v. City & Cty. of San Francisco*, 43 Cal. App. 5th 796, 807 (Ct. App. 2019), *review denied* (April 1, 2020).

[14] *LAPD v. Superior Court (Church of Scientology)*, 65 Cal. App. 3d 661, 668 (2 Dist. 1977).

[15] *Poway Unified Sch. Dist. v. Superior Court (Copley Press)*, 62 Cal. App. 4th 1496 (4 Dist. 1998).

[16] 5 U.S.C. § 552 et seq.

[17] *See ACLU v. Deukmejian*, 32 Cal. 3d 440, 447 (1982) (Public Records Act modeled on FOIA, judicial construction and legislative history of federal act illuminate the interpretation of its California counterpart); *Cook v. Craig*, 55 Cal. App. 3d 773, 781 (3 Dist. 1976) (noting the similarity between the provisions of state and federal law).

certain non-profit organizations of local agencies which are supported by public funds.[18]

V. WHAT ARE "PUBLIC RECORDS?"

The Public Records Act defines "public records" as follows:

> Public records includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

The term "writing" means:

> any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.[19]

These definitions encompass much more than written or printed documents. Public records include computer data, and an agency must provide computer records in any electronic format in which the agency holds the information. If a requester asks for the records in a particular format, the agency must provide the records in that format, provided it is a format used by the agency to create copies for its own use or for provision to other agencies, unless an exception applies.[20] Note, however, that computer software developed by a local agency is not a "public record" subject to the Public Records Act.[21]

On the other hand, a requester's rights under the Public Records Act are not unlimited. A local agency is not required to create a document or compile a list in response to a request under the Public Records Act.[22]

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[18] Gov't Code § 7920.510. The Public Records Act also applies to charter schools and entities managing charter schools. Ed. Code § 47604.1.

[19] Gov't Code § 7920.530 and 7920.545.

[20] Gov't Code § 7922.570 For further discussion of the exception to this rule, see Part Two. Electronic Records, Section II.B. "Metadata" of this Handbook.

[21] Gov't Code § 7922.585.

[22] Based upon the definition of "writing," Gov't Code § 7920.545, and the requirement that a requested record be "identifiable," Gov't Code § 7922.530(a); See also *Sander v. State Bar of California*, 26 Cal. App. 5th 651, 665-66 (1 Dist.

While these definitions are general, over the years the courts have both broadened and limited the scope of the definition of "public record." First, it is clear that the term "public records" encompasses more than simply those documents that public officials are required by law to keep as official records. Rather, courts have held that a public record is one that is kept because it is "necessary or convenient to the discharge of [an] official duty."[23] Second, courts have observed that merely because the writing is in the possession of the local agency, it is not automatically a public record. It must relate in some substantive way to the conduct of the public's business.[24] Thus, personal notes and personal records, such as shopping lists or letters from friends that are totally void of public business, are not public records.[25] In *City of San Jose v. Superior Court*, the California Supreme Court provided several factors to consider when analyzing whether a writing is a public record, including: the content of the writing; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment.[26] In addition, it is important to note that a record need not be a "document" to fall within the ambit of the Public Records Act. A public record is subject to disclosure under the Public Records Act "regardless of physical form or characteristics."[27]

Further, local agencies are obligated to determine whether a public records request seeks copies of disclosable public records in the "possession" — either actual or constructive possession — of the agency.[28] On occasion, a local agency prepares, uses, or owns a document containing information related to the conduct of the public's business, but does not physically possess it, such as when a local agency hires a private consultant to conduct work on behalf of the agency. When the public record is in the possession of a private consultant or sub-consultant who does work for the local agency, the contractual relationship between the local agency and consultant or sub-consultant will likely determine whether the local agency has the right to control the records and therefore "constructive possession" of the documents.[29] In *Community Youth Athletic*

2018) (stating that "the CPRA … does not require [public agencies] to create new records to satisfy a request."); *Steinle v. City & Cty. of San Francisco*, 919 F.3d 1154, 1166 (9th Cir. 2019).

23 *City of San Jose v. Superior Court (Smith)*, 2 Cal. 5th 608, 618 (2017); *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340 (5 Dist. 1984); *San Gabriel Tribune v. Superior Court (City of West Covina)*, 143 Cal. App. 3d 762, 774 (2 Dist. 1983); *People v. Tomalty*, 14 Cal. App. 224, 231 (1 Dist. 1910).

24 *City of San Jose,* 2 Cal. 5th at 618; *Braun*, 154 Cal. App. 3d at 340; *San Gabriel Tribune*, 143 Cal. App. 3d at 774; Gov't Code § 7920.530.

25 *San Gabriel Tribune*, 143 Cal. App. 3d at 774.

26 *City of San Jose*, 2 Cal. 5th at 618.

27 Gov't Code § 7920.530.

28 Gov't Code § 7922.535. *City of San Jose*, 2 Cal. 5th at 623.

29 *Consolidated Irrigation District v. Superior Court (City of Selma)*, 205 Cal. App. 4th 697, 709-11 (5 Dist. 2012); *Community Youth Athletic Center v. City of National City*, 220 Cal. App. 4th 1385, 1427-29 (4 Dist. 2013); *see also Regents of the University of California v. Superior Court (Reuters America LLC)*, 222 Cal. App. 4th 383, 398 (1 Dist. 2013) *as modified on denial of reh'g* (Jan. 14, 2014).

Center v. City of National City, the court found that under the contract between the City and its consultant, the City had the right to possess and control the record that was the subject of a public records request, even if that local agency had not previously enforced its ownership right.[30] The court held that the City had an obligation "to make reasonable efforts to facilitate the location and release of the information."[31] The City's failure to assert its contractual right to obtain the record from the consultant violated the Public Records Act.[32] On the other hand, in *Anderson-Barker v. Superior Court of Los Angeles County*, the court held that a city's ability to access privately held, electronically-stored data did not equate to a form of possession of the data when a city does not direct what information a third party contractor places on its databases, and has no authority to modify the data in any way.[33] Similarly, in *Consolidated Irrigation District v. Superior Court*, the court found that the City had no control over a sub-consultant's records.[34] The sub-consultant had been hired by the City's primary consultant, and based on the facts in that case, the City had no obligation under the Public Records Act to obtain and produce the records of the sub-consultant.

VI. HOW DOES A LOCAL AGENCY DETERMINE THE SCOPE OF A PUBLIC RECORDS REQUEST?

Most public records requests are straightforward. The public is familiar with records regularly kept by a local agency, such as meeting minutes, staff reports, financial reports, and other documents discussed at public meetings. Requests for those records are easy to fulfill. Many of these records may be available on a local agency's website, and the Public Records Act allows a local agency to satisfy a request for public records by directing the requester to that website.[35] Sometimes, the public is unfamiliar with the types of records maintained by local agencies. The requester may not be able to provide the specificity necessary to identify a public record, or the request may be so broadly stated that a local agency cannot reasonably determine which records fall within the scope of the request.

Under those circumstances, the Public Records Act imposes duties on both local agencies and requesters. Local agencies must assist a requester to formulate a "focused and effective request that reasonably describes an identifiable record or records," by following certain procedural requirements.[36] Likewise, the

[30] *Community Youth Athletic Center*, 220 Cal. App. 4th at 1428.

[31] *Id.* at 1429.

[32] *Id.*

[33] *Anderson-Barker v. Superior Court (City of Los Angeles)*, 31 Cal. App. 5th 528 (2 Dist. 2019).

[34] *Consolidated Irrigation District*, 205 Cal. App. 4th at 711.

[35] Gov't Code § 7922.545.

[36] Gov't Code § 7922.600. Further discussion of these procedural requirements is in Section X, below.

requester is obligated to engage in this process, and to provide the scope of the public information requested, which the City must communicate to the custodian of records. Both the local agency and the requester must be reasonable in this process.[37]

In some instances, there may be many records responsive to a request. When faced with a voluminous request, agencies should work with the requester to narrow down the request, ask if they would consent to an extended deadline for responding, and providing responsive records on a rolling basis. Even where requests return a significant number of responsive records, courts have held that agencies must process the request.[38]

VII. CAN A LOCAL AGENCY RELINQUISH ITS PUBLIC RECORDS ACT OBLIGATIONS TO SOMEONE ELSE?

A local agency cannot sell or provide a public record subject to disclosure under the Public Records Act to a private entity in a manner that prevents the local agency from providing the record directly.[39] For example, the county recorder cannot transfer all birth and death records to a private company and insist that the public obtain birth certificates from the private entity.

Similarly, a local agency may not enter into a contract that allows another party to control the disclosure of information that is subject to the Public Records Act.[40] For example, a contract provision that requires the consent of a contractor before a local agency may release a public record prepared by the contractor violates the Public Records Act. Additionally, if a local agency enters into a contract that requires a private entity to review, audit, or report on any aspect of the local agency, that contract must be made available to the public upon request, unless the contract is exempt from disclosure pursuant to another exemption in the Public Records Act.[41]

[37] *Community Youth Athletic Center v. National City*, 220 Cal. App. 4th 1385, 1427 (4 Dist. 2013).

[38] *Getz v. Superior Court*, 2021 WL 5879194 (3 Dist. 2021), ordered published (December 13, 2021) (holding that it is not unduly burdensome to require El Dorado County to review more than 42,000 emails that were potentially responsive to a request for "any/all emails" by or between "anyone" employed by the County and "anyone" at one of four email domains associated with a real estate developer, its legal counsel, and its public relations consultants).

[39] Gov't Code § 7921.010(a).

[40] Gov't Code § 7921.005.

[41] Gov't Code § 7928.700.

VIII. MUST A PUBLIC RECORDS ACT REQUEST BE MADE IN WRITING, OR MAY IT BE MADE ORALLY?

Nothing in the Public Records Act requires a member of the public to place his or her request for public records in writing.[42] While many local agencies provide forms on their website or at their offices for making a written Public Records Act request, a requester is not required to use the form offered. An oral request is sufficient to trigger the requirements of the Public Records Act.

Additionally, an argumentative or disruptive requester cannot be permanently banned from the premises by a local agency or forced to make their requests in writing.[43] However, the right to inspect public records is subject to the implied rule of reason that enables the custodian of public records to formulate regulations necessary to prevent interference with the orderly functioning of the agency's office.[44] If faced with a loud or angry person who is making an oral request, and the records are not immediately available, it is advisable for staff to write down the request and tell the requester the agency will respond in writing within the time limits specified in the Public Records Act. Your city attorney can provide additional guidance in the event a member of the public is repeatedly abusive towards staff.

IX. WHAT PUBLIC RECORDS ARE EXEMPT FROM DISCLOSURE UNDER THE PUBLIC RECORDS ACT?

A. Disclosure of Exempt Records Waives Confidentiality

The Public Records Act specifically exempts a number of categories of records from disclosure requirements. If documents are exempt from disclosure, it is important that confidentiality be maintained. Once an otherwise exempt record is knowingly released to any member of the public, disclosure constitutes a waiver of the exemption for that record, and the record must be provided to any subsequent requesting member of the public.[45] This waiver ensures a public agency does not carry out "selective disclosure," wherein some members of the public are provided the right of access to specific records, while some requests for the same records are denied by the public agency for the same materials.[46]

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[42] *Los Angeles Times v. Alameda Corridor Transp. Authority*, 88 Cal. App. 4th 1381, 1392 (2 Dist. 2001).

[43] *Galbiso v. Orosi Public Utility District*, 167 Cal. App. 4th 1063, 1088-89 (5 Dist. 2008).

[44] *Bruce v. Gregory*, 65 Cal. 2d 666, 676 (1967); *Rosenthal v. Hansen*, 34 Cal. App. 3d 754, 761 (3 Dist. 1973); 64 Ops. Cal. Atty. Gen. 317 (1981).

[45] Gov't Code § 7921.505.

[46] *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 646, 658 (3 Dist. 1974).

There are a few situations where the knowing disclosure of an otherwise exempt record does not constitute a waiver of exemption. Exemptions are not waived when disclosures are made:

- Through discovery procedures associated with lawsuits or in court proceedings;
- Pursuant to a statute that limits disclosure for specified purposes;
- When not required by law and prohibited by formal action of the elected legislative body of the local agency; or
- To another government agency that agrees to treat the records as confidential.[47]

The California Supreme Court held that a public agency's inadvertent disclosure resulting from human error does not waive an exemption.[48] In *Ardon v. City of Los Angeles*, the City of Los Angeles inadvertently disclosed several attorney-client and attorney work product documents in response to a PRA request. The requester was an attorney actively involved in pending litigation against the City.[49] After becoming aware of the inadvertent disclosure, the City filed a motion in court seeking the return of the privileged materials.[50] The California Supreme Court held that the Public Records Act's waiver provision[51] applied only to intentional and not inadvertent disclosure.[52] The court justified this distinction by finding that the City of Los Angeles had not engaged in selective disclosure: "[r]ather, it seeks no disclosure; it is trying to force plaintiff's attorney to return the privileged documents unread."[53]

The California Supreme Court's decision in *Ardon v. City of Los Angeles* allows a public agency to argue that a disclosure was inadvertent and ask for return of exempt records that were released in error. However, nothing in the Public Records Act compels the requester to return the records. Instead, the public agency must go to court to obtain a judicial order directing the requester to return or destroy the inadvertently disclosed records.[54] This presents a number of problems. First, the circumstances surrounding the dissemination of those materials would have to be evaluated on a case-by-case basis by the reviewing court.[55] The court may not agree with the public agency's assertion that the

[47] Gov't Code § 7921.505. Additional exceptions apply to specific state agencies.

[48] *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176 (2016).

[49] *Ardon*, 62 Cal. 4th at 1180-82.

[50] *Id*. at 1181.

[51] Gov't Code § 7921.505.

[52] *Ardon*, 62 Cal. 4th at 1180.

[53] *Id*. at 1185-86.

[54] *See Newark Unified School District v. Superior Court (Brazil)*, 245 Cal. App. 4th 887 (1 Dist. 2015).

[55] *Id*. at 910.

disclosure was inadvertent. Second, if the exempt records were given wide-spread distribution before the error was found, a court may decide not to order return of the records. Once the information is in the public sphere, the bell cannot be unrung. Third, it is costly to go to court to seek injunctive relief.

Consequently, public agencies should continue to conduct a thorough and exhaustive review of responsive documents before releasing any materials in response to a Public Records Act request. The California Supreme Court acknowledged that its decision was limited to "truly inadvertent disclosures and must not be abused to permit the type of selective disclosure" prohibited by the Public Records Act.[56] Further, the California Supreme Court emphasized that a public agency's own characterization of its intent is not dispositive.[57] The best practice continues to be to complete a thorough review before releasing responsive records.

B. Statutory Exemptions for Confidential Records

The following is a list of the statutory exemptions. This list is not exhaustive.

(1) Public agency employees' personal information.

Gov't Code § 7928.300.

The Public Records Act contains protections for specified personal information of all public agency employees. The home addresses, home telephone numbers, personal cellular telephone numbers and birth dates of all public agency employees are not considered to be public records subject to disclosure, except in limited circumstances. Personal e-mail addresses of public employees are also not public records subject to disclosure, unless a personal e-mail address is used by an employee to conduct public business or if the address is necessary to identify a person in an otherwise disclosable communication. The Public Records Act also requires local agencies to redact social security numbers from records before disclosing the records to the public in response to a Public Records Act request.[58]

[56] *Ardon*, 62 Cal. 4th at 1190.

[57] *Id*.

[58] Gov't Code § 7922.200. State agencies are prohibited from sending outgoing U.S. mail to an individual that contains the individual's social security number unless the number is truncated to its last four digits, except in specified circumstances. Gov't Code § 11019.7.

(2) Referendum, recall and initiative petitions, ballots and related material.

Gov't Code §§ 7924.100-7924.110.

Election-related petitions and all memoranda prepared by the county elections officials in their examination of the petitions indicating which registered voters signed the petitions are strictly confidential. These materials may be viewed only by elections officials and their deputies. Other officials, including agency attorneys, must obtain a court order to view petitions. If the elections officials determine that a petition is legally insufficient, petition proponents and their representatives designated in writing must be permitted to review these materials. Election ballots themselves are exempt from disclosure.[59]

(3) The identity of persons who have requested bilingual ballots or ballot pamphlets.

Gov't Code § 7924.005.

Election-related information revealing the identity of people who have requested bilingual ballots or ballot pamphlets or other related data that would reveal the identity of the people requesting bilingual materials is exempt from disclosure. Persons otherwise authorized to review this material, such as elections officials, may examine these materials.

(4) Preliminary drafts, notes, or interagency or intra-agency memoranda.

Gov't Code § 7927.500.

Public officials should be aware that preliminary drafts and notes, along with interagency and intra-agency memoranda, are exempt from disclosure as public records if those documents are not customarily retained by the local agency in the ordinary course of business, and the public interest in withholding those records clearly outweighs the public interest in disclosure.[60]

In considering whether to use this exemption, agencies should determine whether the disclosure of a preliminary draft, note, or interagency or intra-agency memorandum would further the interest of the Act in open government. The fact that the document is merely a step in the process and does not provide important information about the public's business probably weighs in favor of nondisclosure.

[59] Elec. Code §§ 15370 and 17301; *Citizens Oversight, Inc. v. Vu*, 35 Cal. App. 5th 612, 619–20 (4 Dist. 2019).

[60] Gov't Code § 7927.500.

The key questions in this area generally may be boiled down to whether a draft, note, or interagency or intra-agency memorandum is one which:

- Is not normally kept by the agency in the ordinary course of business;
- Is not prepared or kept to document or memorialize the day-to-day transaction of the public's business;
- Is merely a temporary step in the process of preparing a final document, reaching a final decision, or determining a course of action; and
- Would expose the agency's decision-making process if disclosed,[61] and the public interest in nondisclosure clearly outweighs the public interest in disclosure.

If the document qualifies under all four categories above, the document probably is exempt from disclosure under the Public Records Act. Documents that do not satisfy one or more of the categories above probably are public records that must be disclosed unless another exemption applies. You should keep in mind, however, that any doubt or question in this regard likely will be decided in favor of disclosure of the record.

In discussing whether a record has not been retained in the ordinary course of business, one court observed, "[i]f preliminary materials are not customarily discarded or have not in fact been discarded as is customary they must be disclosed."[62] One of the purposes of this condition is to prevent "secret law," that is an undisclosed collection of written rules guiding the agency's decisions.[63]

Consequently, a record that must be retained pursuant to a local agency's records retention schedule, policies, or customs does not fall within this exemption. For example, if a policy decision is made to retain drafts in order to document the bargaining history after an agreement is negotiated; those drafts likely are not exempt under Section 7927.500. Also, if it is permissible under an agency's records retention schedule to destroy preliminary documents, but the agency retained such a document after the final report is prepared, the preliminary document arguably is not exempt under Section 7927.500.

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[61] *Citizens for a Better Environment v. Dep't of Food and Agriculture*, 171 Cal. App. 3d 704, 715-16 (3 Dist. 1985) (concluding that "[t]he interest in fostering robust agency debate" is the only public interest that can justify nondisclosure under Section 7927.500).

[62] *Id.* at 714.

[63] *Id.* at 714 n.7.

(5) Records pertaining to pending litigation to which the agency is a party.

Gov't Code § 7927.200.

Under this exemption, records actually created by an agency for its own use in litigation are exempt from disclosure under the Public Records Act.[64] Previously created or disclosed records may not be retroactively re-classified as being exempt under this Section.[65] Generally, courts will examine the "dominant purpose" behind the document's creation.[66] Documents prepared "by a public entity for its own use in anticipation of litigation, which documents it reasonably has an interest in keeping to itself until litigation is finalized" are protected by the exemption.[67] Thus, while documents created prior to the commencement of litigation appear to receive greater scrutiny to determine their dominant purpose, the exemption can apply to documents created before litigation has commenced, that is, before a claim has been made with the local agency under the Government Claims Act or a complaint filed with a court. Once litigation is concluded, however, the exemption will no longer apply.[68]

This exemption also applies to litigation-related documents, even if not created by an agency, when sought by persons or entities not a party to the litigation and which the parties to the litigation do not intend to be revealed outside the litigation. This exemption does not cover deposition transcripts because they are available to the public under another statute.[69] And where a plaintiff generally is required to file a claim under the Government Claims Act to initiate litigation against a local agency, the actual claim form filed with the local agency is not exempt under this Section as "[t]here is no unfair disadvantage [in the pending litigation] to the public entity from disclosure of the mere claim form."[70]

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[64] *Fairley v. Superior Court (City of Long Beach)*, 66 Cal. App. 4th 1414, 1421-22 (2 Dist. 1998).

[65] *City of Hemet v. Superior Court (Press-Enterprise Co.)*, 37 Cal. App. 4th 1411, 1420 & n.11 (4 Dist. 1995).

[66] *Fairley*, 66 Cal. App. 4th at 1420

[67] *Id.* at 1421.

[68] Gov't Code § 7927.200 (noting that the exemption applies "until the pending litigation or claim has been finally adjudicated or otherwise settled."); *City of Los Angeles v. Superior Court (Axelrad)*, 41 Cal. App. 4th 1083, 1089 (2 Dist. 1996).

[69] *Board of Trustees of California State Univ. v. Superior Court (Copley Press, Inc.)*, 132 Cal. App. 4th 889, 901-902 (4 Dist. 2005); Civ. Proc. Code § 2025.570.

[70] *Poway Unified Sch. Dist. v. Superior Court (Copley Press, Inc.)*, 62 Cal. App. 4th 1496, 1505 (4 Dist. 1998).

(6) Personnel, medical, or similar records.

Gov't Code §§ 7927.700; 7928.300.

When the disclosure of personnel,[71] medical, or similar files would constitute an unwarranted invasion of personal privacy, this exemption applies. In determining whether personnel records should be disclosed, courts first decide whether disclosure would compromise the individual's substantial privacy interest. If it does, the court determines whether the potential harm to those interests caused by disclosure outweighs the public interest in disclosure.[72] As will be discussed below, the California Supreme Court has concluded that public employees in general have a significantly reduced expectation of privacy in their salaries, and that the strong public interest in knowing how the government spends its money justifies disclosure of salary information.[73] Courts have recognized the privacy interest implicated by records of employee misconduct and wrongdoing.[74] However, at least one appellate court has found that where the public employee is in a position of authority, such as a superintendent of a school district, the individual has "a significantly reduced expectation of privacy in the matters of his [or her] public employment."[75] This exemption for personnel, medical or similar records does not justify withholding employment agreements. By statute, employment agreements between a local agency and any public official or public employee is a public record not subject to an exemption.[76]

This exemption for personnel records also does not justify withholding personnel records concerning incidents involving the discharge of a firearm at a person by a peace officer that resulted in death or great bodily injury, records concerning a sustained finding that a peace officer engaged in sexual assault or dishonesty, a sustained finding of unreasonable or excessive force, a sustained finding of failure to intervene against another officer using unreasonable or excessive force, or a sustained finding of discrimination against a protected class.[77]

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[71] The scope of personnel records generally covers records relating to an employee's performance or to any grievance concerning an employee, and would include personal information to which access is limited to an employee's supervisors. Such records do not need to be stored in a personnel file to be exempt; it is the contents of the document which makes them confidential. *Associated Chino Teachers v. Chino Valley Unified Sch. Dist.*, 30 Cal. App. 5th 530, 539-41 (4 Dist. 2018).

[72] *Versaci v. Superior Court (Palomar Cmty. Coll. Dist.)*, 127 Cal. App. 4th 805, 818-820 (4 Dist. 2005).

[73] *International Federation of Professional and Technical Engineers, LOCAL 21, AFL–CIO, v. Superior Court, (Contra Costa Newspapers, Inc.)*, 42 Cal. 4th 319, 329-333 (2007)(*International Federation*).

[74] *Associated Chino Teachers*, 30 Cal. App. 5th at 541.

[75] *BRV, Inc. v. Superior Court (Dunsmuir Joint Union High School District)*, 143 Cal. App. 4th 742, 758 (3 Dist. 2006) (ordering reports investigating allegations of misconduct disclosed, as the public's interest in why the district entered into a termination agreement with the superintendent that appeared to the public to be a "sweetheart deal" outweighed the superintendent's interest in preventing disclosure of the reports).

[76] Gov't Code § 7928.400.

[77] Penal Code §§ 832.7, 832.8.

Disclosure of Public Employee Salaries

The California Supreme Court has held that salaries of public employees are not exempt from disclosure. In *International Federation of Professional and Technical Engineers v. Superior Court*, (Contra Costa Newspapers, Inc.),[78] the California Supreme Court held that individually identifiable salary information is not exempt from disclosure under the Public Records Act, the California Constitution or the Penal Code. In this case, a newspaper sought disclosure from the City of Oakland of names, job titles and gross salaries of City employees earning $100,000 or more each year, including overtime. The City provided salary and overtime information for each job classification but refused to provide salary information linked to individual employees. The newspaper sued to obtain disclosure of the records under the Public Records Act. The Supreme Court held that a public entity's payroll expenditures are public records, and that disclosure of salary records for City employees earning $100,000 or more each year is not an unwarranted invasion of personal privacy.[79]

With regard to peace officers, the Supreme Court rejected the police union's argument that Penal Code Sections 832.7 and 832.8 bar disclosure of the amount of a peace officer's salary.[80] The Supreme Court ruled that salary information of peace officers does not constitute "personnel records" under Penal Code Sections 832.7 or 832.8, and is not information obtained from personnel records.[81] As such, the Penal Code does not mandate that peace officer salary information be excluded from disclosure under the Public Records Act.

The Supreme Court also rejected the argument that each public records request must be evaluated on a case-by-case basis to evaluate the individual employee's privacy interests and the particular public interest at issue.[82] The Court stated that this would reverse the presumption of openness of public records mandated by the Public Records Act, and the public entity bears the burden of demonstrating that particular records are exempt.[83] The Court, however, left open the possibility that a public entity may, on a case-by-case basis, decline to

[78] *International Federation*, 42 Cal. 4th 319 (2007).

[79] The Supreme Court also narrowed the precedential value of *Teamsters Local 856 v. Priceless, LLC*., 112 Cal. App. 4th 1500 (1 Dist. 2003). The appellate court in *Priceless* held that names, job titles, and W-2 information of City employees was confidential information and not subject to disclosure under the Public Records Act because the City in question had a prior practice of treating that information as confidential. To the extent that *Priceless* could be read as holding that a City's practice of refusing to disclose certain information had created a privacy interest in those records, the California Supreme Court disagreed and refused to adopt that holding. *International Federation*, 42 Cal. 4th at 336.

[80] *Id.*, at 343.

[81] *Id*.

[82] *Id*. at 336.

[83] *Id*. at 336-37.

release records pertaining to individual employees where anonymity is essential to their safety, such as undercover narcotics officers.

Although this decision arose in the context of a public records request for the names and salaries of City employees earning more than $100,000 per year, the Supreme Court's reasoning may have general application to salary information for all City employees, regardless of level of salary.

In a companion case, *Commission on Peace Officer Standards and Training v. Superior Court*, the California Supreme Court addressed the confidentiality of certain non-salary information.[84] In this case, the Commission refused to provide the names, employing departments, and hiring and termination dates of peace officers from its database. The Commission maintains the database to monitor participating law enforcement departments' compliance with Peace Officer Standards and Training ("POST") regulations. The California Supreme Court held that the names, employing departments, and hiring and termination dates of peace officers are not confidential under Penal Code Sections 832.7 and 832.8, and are not exempt from disclosure under the Public Records Act. The California Supreme Court, however, remanded the case to the lower courts to allow the Commission the opportunity to establish that information regarding particular officers or categories of officers should be excised from the disclosed records in order to protect the safety or efficacy of those peace officers.[85]

(7) Arrest records, complaint reports, investigatory, and security files.

Gov't Code §§ 7923.600-7923.630.

This exemption strictly limits the information required to be disclosed about arrests, complaints and investigations.[86] Records of complaints to or investigations conducted by police agencies generally may be withheld. Investigatory or security files compiled by a local agency for law enforcement or licensing purposes are also covered by the exemption, provided "there is a concrete and

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[84] *Commission on Peace Officer Standards and Training v. Superior Court (Los Angeles Times Communications LLC)*, 42 Cal. 4th 278 (2007).

[85] *Id.* at 303; *see also*, *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59 (2014) (holding the Act did not protect from disclosure the names of officers involved in on-duty shootings).

[86] The scope of "records of investigation" is narrowly construed. *American Civil Liberties Union Foundation v. Superior Court*, 3 Cal. 5th 1032, 1039 (2017). Records of investigation exempted under Section 7923.600 *et seq.* "encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1071 (2001). In *American Civil Liberties Union of Southern California v. Superior Court*, the California Supreme Court declined to extend the meaning of "investigation" to cover bulk raw data obtained as part of a mass personal data collection, because there was no targeted "investigation" into a particular criminal act. 3 Cal. 5th 1032, 1042.

definite prospect of criminal law enforcement proceedings."[87] This exemption extends indefinitely, even after investigations are concluded.[88] In most cases, agencies are required to disclose to the public[89] the full name, current address, and occupation of every person arrested by the agency, including a general physical description, along with the date and time of arrest. This disclosure, however, is not required where it would endanger the safety of a person involved in an investigation or jeopardize the successful completion of the pending investigation or a related investigation.

While investigations conducted by police agencies are generally not disclosable, investigations of police agencies may be subject to PRA requests. When releasing records pertaining to investigations of police agencies, the agency must redact or otherwise withhold any information that is part of a police officer's confidential personnel file.[90] Counsel should be consulted to ensure that confidential information is not disclosed.

In addition, local agencies are required to disclose to the public the time, substance, and general location of all complaints and requests for assistance, and the time and nature of the agency's response. However, no disclosure may be made to any arrested person or defendant in a criminal action of the address and telephone number of any person who is a victim or witness in an alleged offense.[91] Further, this disclosure is not required where it would endanger the safety of a person involved in an investigation or jeopardize the successful completion of the pending investigation or a related investigation.

In all cases, the address of a victim of an alleged sex offense or human trafficking offense must be withheld.[92] Additionally, the name of the victim of an alleged sex offense must be withheld if the victim or a minor victim's parent or guardian requests it be withheld. While the law refers to "sex offenses," the crimes listed in Section § 7923.615 include sexual assault, child molestation, child abuse, hate crimes, and stalking.

The Public Records Act prohibits the commercial use of arrest and arrestee information, and requires that persons requesting such information sign a declaration, under penalty of perjury, that the request is made for a scholarly, journalistic, political, or governmental purpose, or for investigation by a licensed

87 *Dixon v. Superior Court (Neves)*, 170 Cal. App. 4th 1271, 1277 (3 Dist. 2009) (internal quotation omitted).

88 *Rackauckas v. Superior Court (Los Angeles Times Communications)*, 104 Cal. App. 4th 169, 174-178 (4 Dist. 2002).

89 Sections 7923.600-7923.630 also authorize release of certain limited information to the victim of a crime and other interested parties, above and beyond that information released to the public generally.

90 *Pasadena Police Officers Association v. City of Pasadena*, 22 Cal. App. 5th 147 (2 Dist. 2018).

91 Penal Code § 841.5.

92 Penal Code § 293.

private investigator.[93] This requirement, however, may have limited applicability given the outcome of litigation by United Reporting Publishing Corporation against the California Highway Patrol.[94] Subsequent to that case, the Attorney General issued an opinion that a law enforcement agency may not require that a requester present subscriber lists, copies of publications, or other verification of a journalistic purpose and the requester is not required to monitor subscribers to prohibit them from using the information for commercial purposes.[95]

Disclosure of Certain Police Department Records

Penal Code sections 832.7 and 832.8 previously provided that peace officer personnel records are confidential and subject to disclosure only after a granted *Pitchess* Motion. Those statutes were amended in 2019 to provide that certain peace officer personnel records and records relating to specified incidents, complaints, and investigations must be made available to the public under the Public Records Act. Under further amendments in 2021, disclosure of additional categories of information is required effective on January 1, 2022. Penal Code sections 832.7 and 832.8 now provide that an agency must disclose any record relating to the report, investigation, or finding of:

- An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.
- When a sustained finding was made that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
- When a sustained finding was made of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying or concealing of evidence, or perjury.

[93] Gov't Code § 7923.620. A commercial publisher of criminal records challenged the constitutionality of this limitation on disclosure, but the United States Supreme Court held that the statute did not violate the First Amendment to the U.S. Constitution. *Los Angeles Police Dep't v. United Reporting Publ'g Corp.*, 528 U.S. 32 (1999).

[94] *United Reporting Publ'g Corp. v. California Highway Patrol*, No. 96-CV-0888-B (S.D. Cal. Aug. 13, 2001) (final judgment on consent) ("As applied to United Reporting's activities as described in this lawsuit, section 6254(f)(3) (now § 7923.620) violates United Reporting's rights under the First Amendment to the United States Constitution by preventing United Reporting from engaging in its journalistic activities as described above.").

[95] 89 Ops. Cal. Atty Gen. 97 (2006).

- When a sustained finding was made involving a complaint that alleged unreasonable or excessive force.

- When a sustained finding was made that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

- When a sustained finding was made that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

- When a sustained finding was made that the peace officer made an unlawful arrest or conducted an unlawful search.

A sustained finding means that the public agency has determined that misconduct occurred and the officer had an opportunity for an administrative appeal, even if that administrative appeal was not actually completed.[96]

These disclosure requirements apply regardless of whether the disclosable records sought pertain to officers employed by the agency or by another public agency and regardless of whether the agency or another public agency created the records.[97] These requirements also apply to records created prior to 2019 if a public records request is submitted after January 1, 2019.[98]

Note, however, that the catchall exemption to disclosure under the Public Records Act (Government Code section 7922.540), can apply to exempt otherwise disclosable records under Penal Code Section 832.7 where, based on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.[99]

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[96] *Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039 (1 Dist. 2021), review denied (June 30, 2021) (court held that the city manager's decision in favor of an officer's termination following a pre-discipline Skelly meeting constituted a sustained finding of dishonesty, even though the officer's subsequent administrative arbitration was not completed because the officer resigned as part of a settlement with the city).

[97] *Becerra v. Superior Court of City & Cty. of San Francisco*, 44 Cal. App. 5th 897 (1 Dist. 2020) *review denied* (May 13, 2020).

[98] *Ventura County Deputy Sheriffs' Assn v. Cty. of Ventura*, 61 Cal. App. 5th 585, 590, 594 (2 Dist. 2021); *Walnut Creek Police Officers' Assn v. City of Walnut Creek*, 33 Cal. App. 5th 940, 941–942 (1 Dist. 2019).

[99] *Becerra,* 44 Cal. App. 5th at 927-929.

Further, as of July 1, 2019, the Act requires an agency to disclose audio and video recordings that relate to a "critical incident." A recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or an incident in which the use of force by a peace officer or custodial officer resulted in death or great bodily injury.[100]

Additionally, recent legislation has imposed requirements on law enforcement agencies to make available online all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the Public Records Act.[101]

The foregoing is a brief overview of this detailed and complex exemption. Police and code enforcement staff should familiarize themselves with the complete requirements of this Section prior to responding to requests for arrest and complaint information.

(8) Information required from any taxpayer in connection with the collection of local taxes.

Gov't Code § 7925.000.

This exemption applies to information that a city or other local agency requires from any taxpayer in connection with the collection of local taxes if that information is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information. One frequent example of this is the submittal of sales or income information under a business license tax requirement where the city has indicated in its business license tax ordinance that the financial information provided will be kept confidential. If the business license is required by ordinance to list the amount of tax paid and be posted at the place of business, however, the amount of tax paid arguably is not confidential.

(9) Library circulation records.

Gov't Code §7927.100.

While this exemption protects from disclosure library circulation records kept for the purpose of identifying the borrower of items available in libraries, it is not applicable to records of fines imposed on the borrowers.

[100] Gov't Code § 7923.625.

[101] Penal Code §13650.

(10) Records exempt from disclosure under other laws including, but not limited to, the Evidence Code sections relating to privilege.

Gov't Code § 7927.705.

This provision of the Public Records Act exempts from disclosure every document held by a local agency that is legally privileged or confidential under some law outside the Public Records Act. The most common example of this exemption protects documents subject to the attorney-client privilege or the attorney work-product doctrine. It is important to note that neither the Public Records Act nor the Brown Act abrogate those important privileges for communications between a local agency and its legal counsel.[102]

For example, in *Los Angeles County Board of Supervisors v. Superior Court*, the Supreme Court ruled that the attorney-client privilege protects the confidentiality of invoices for legal work in pending and active legal matters.[103] The Court reasoned that such invoices are so closely related to attorney-client communications that they may reveal legal strategy or consultation. The Court emphasized, however, that the attorney-client privilege does not categorically shield everything in a billing invoice from PRA disclosure.

This case also reaffirms the principle that the Public Records Act does not permit public agencies to withhold an entire document that contains both exempt and nonexempt information. On this point, the Supreme Court ruled that agencies must "use the equivalent of a surgical scalpel to separate those portions of a record subject to disclosure from privileged portions" unless records are not "reasonably segregable."[104] Further, the Court stressed that any ambiguity must be construed in "whichever way will further the people's right of access."[105]

On remand, the Court of Appeal clarified that specific billing entries and descriptions of work contained in attorney invoices are not subject to disclosure under the PRA, whether they related to pending, ongoing or long-concluded legal matters. The Court further found that cumulative fee totals contained in attorney invoices for pending or ongoing legal matters are also protected from disclosure by the attorney-client privilege. And finally, it found that cumulative fee totals for matters concluded long ago may be subject to disclosure only if the cumulative fee totals do not reveal anything about the legal consultation or

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[102] *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 377 (1993).

[103] *Los Angeles County Board of Supervisors v. Superior Court (ACLU of Southern California),* 2 Cal. 5th 282 (2016).

[104] *Id.* at 292.

[105] *Id.* (citing *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176, 1190 (2016), and Cal. Const., art. I, § 3, subd. (b)(2)).

provide any insight into legal strategy.[106] Whether or not any particular fee total must be disclosed is a factual inquiry for the trial court.[107]

While a full discussion of attorney-client privilege and attorney work product is outside the scope of this Handbook, it is worth noting that a court may find waiver of the privilege when a city and developer share communications prior to approval of a development project under the California Environmental Quality Act (CEQA). In *Citizens for Ceres v. Superior Court*, the appellate court held that a city waived those privileges for communications it sent to a developer prior to approval of a development project under CEQA.[108] The court held that the "common interest doctrine," which generally allows disclosure of privileged communications to third parties with a common interest in a legal matter, did not apply to prevent the city's waiver.[109] As a result, the city was required to include its attorneys' communications with the developer in the administrative record it prepared. In contrast, in another more recent CEQA case, *Golden Door Properties, LLC v. Superior Court*, the appellate court ruled a common interest existed between a county and developer prior to project approval because the plaintiffs had previously sued both the applicant and the lead agency twice before project approval.[110] In light of these differing opinions, local agencies should be cautious in sharing documents and legal opinions prepared by the agency's attorney with a project developer, and recognize that in the event it does share such documents and opinions of its attorneys, in some cases those disclosures may waive the agency's privilege.

In *Labor and Workforce Development Agency v. Superior Court*, the Court of Appeal extended the protection afforded by Section 7927.705 to documents revealing the deliberative process of an agency, even going so far as to prevent the disclosure of the identities of persons with whom the agency confidentially communicated, and the general subject matter of the communications.[111]

Determining which other confidentiality laws are incorporated into the Public Records Act has always been difficult and time-consuming. In 1998, the Legislature attempted to address this problem by enacting a statute that lists most of the exemptions found in other laws.[112] The list now begins at Government Code Section 7930.005 and continues for more than 20 pages. Although the Public Records Act cautions that this list may not be complete, it is a helpful list.

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106 *County of Los Angeles v. Superior Court*, 12 Cal. App. 5th 1264, 1274 (2 Dist. 2017).

107 *Id*.

108 *Citizens for Ceres v. Superior Court (City of Ceres)*, 217 Cal. App. 4th 889, 922 (5 Dist. 2013).

109 *Id.* at 914-921.

110 *Golden Door Properties, LLC v. Superior Court of San Diego County*, 53 Cal. App. 5th 733, 755-756 (4 Dist. 2020), review denied (Nov 10, 2020).

111 *Labor & Workforce Dev. Agency v. Superior Court*, 19 Cal. App. 5th 12 (3 Dist. 2018).

112 Stats. 1997, c. 620 (S.B. 143 – Kopp).

(11) Personal financial information required of licensees.

Gov't Code § 7925.005.

When a local agency requires that applicants for licenses, certificates, or permits submit personal financial data, that information is confidential. This exemption, however, does not apply to financial information filed by a franchisee to justify a rate increase, presumably because those affected by a rate increase have a right to know its basis.[113] The term "license" was narrowly construed by the court in *San Gabriel Tribune v. Superior Ct.* to exempt financial information of applicants whose business with the agency is only public because they must comply with licensing requirements and regulations. To give effect to the Public Records Act policy that favors disclosure over secrecy in government, the court concluded that a franchisee is akin to a contractual relationship and is not an applicant for a license under Section 7925.005.

(12) Terrorist assessment reports.

Gov't Code § 7929.200.

A document prepared for or by a local agency that assesses its vulnerability to terrorist attacks or other criminal acts intended to disrupt the local agency's operations is exempt from disclosure if the document is prepared for distribution or consideration in a closed session of the local agency.

(13) Voter registration information.

Gov't Code § 7924.000.

The home address, telephone number, email address, precinct number, and prior registration information shown on voter registration cards is confidential. Disclosure of that information is permitted only to candidates and campaigns, and to any person for election, scholarly, journalistic, or political purposes pursuant to Section 2194(a)(3) of the Elections Code. The driver's license number, social security number and signature of the voter shown on the voter registration card are also confidential and cannot be disclosed to any person.[114]

We believe that this exemption extends to any document that by law must include the information made confidential by this Section, including applications for absentee ballots and returned absentee ballot packages. However, voter registration information identified under Section 7924.000 of the Government

[113] *San Gabriel Tribune v. Superior Court (City of West Covina)*, 143 Cal. App. 3d 762, 779-780 (2 Dist. 1983).

[114] Elec. Code § 2194(b)(1).

Code must be made available to the public if the information is at least one hundred years old.[115]

(14) Utility customer information.

Gov't Code § 7927.410.

The name, credit history, utility usage data, home address, and telephone number of utility customers of local agencies are exempt from disclosure, except in certain circumstances. This information may be disclosed to authorized family members of the person to whom the information pertains or his or her agent, to an officer or employee of another governmental agency when necessary to perform official duties, or upon court order or the request of law enforcement for an ongoing investigation. In addition, the information may be disclosed if the utility customer has used the utility services in a manner inconsistent with applicable local utility usage policies. If the utility customer is a public official with authority to determine utility usage policies, the information may be disclosed except that the home address of an appointed official may not be disclosed without the official's consent. Lastly, the information may be disclosed if the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure .

(15) Unauthorized Internet posting of officials' addresses and telephone numbers.

Gov't Code §§ 7928.205 - 7928.230

The posting of the home address or telephone number of any elected or appointed official on the internet by a local agency without that individual's written permission is prohibited. The definition of "elected or appointed officials" includes, but is not limited to, members of a city council, members of a board of supervisors, mayors, city attorneys, police chiefs, and sheriffs. It is a misdemeanor for any person to post such information with the intent to cause bodily injury to the official, his or her spouse or child. The official may bring an action for damages under certain circumstances. If bodily injury occurs as a result of the posting, then the posting could become a felony.

If a person, business, or association publicly posts on the internet the home address or telephone number of any elected or appointed official, the official may make a written demand to have the information removed. An official may bring an action in court to seek injunctive relief in the event the posting is not

[115] Elec. Code § 2194.1.

removed or is posted again during the four years that the written demand is in effect.[116]

(16) Social Security Numbers.

Gov't Code § 7922.200.

Local agencies must redact social security numbers from records before disclosing them to the public.

(17) Records and Information of the Controller Obtained pursuant to the Unclaimed Property Law.

Gov't Code § 7527.425 and 7925.015

AB 2280 amended the Public Records Act to exempt records and information of the Controller obtained pursuant to the Unclaimed Property Law. This exempts records that the Controller and any third-party auditors obtain as a result of an examination of records pursuant to Section 1571 of the Code of Civil Procedure, other than records of property that should have been reported to the Controller as unclaimed property. It also exempts records related to statements of personal worth or personal financial data, including, but not limited to, wills, trusts, account statements, earnings statements, or other similar records and personal information as defined by Section 1798.3 of the Civil Code,

(18) General public interest exemption.

Gov't Code § 7922.540.

In cases where a specific statutory exemption does not apply, a record still might be exempt from disclosure if:

> on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.[117]

The numerous cases examining this "balancing test" make it clear that the burden is **on the local agency** to show that the public interest in confidentiality outweighs the public interest in disclosure. In fact, given the public policy involved, courts demand a demonstration of "clear overbalance" to justify non-disclosure.[118]

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[116] Note, however, that at least one court has indicated that this law may be unconstitutional where applied to prohibit the publication of contact information that is truthful information about a matter of public concern where the information published was lawfully obtained. *Publius v. Boyer-Vine*, 237 F. Supp. 3d 997, 1016, 1021(E.D. Cal. 2017).

[117] Gov't Code § 7922.000 and 7922.540.

[118] *City of Hemet*, 37 Cal. App. 4th at 1421; *see also Black Panther Party*, 42 Cal. App. 3d at 657.

In practice, very few local agencies have been able to convince reviewing courts that the public interest in confidentiality outweighs the interest in disclosure. In the absence of a specific statutory exemption, this "catch-all" distinction rarely has been successfully relied upon to justify nondisclosure. Thus, local agencies must in good faith find a relatively rare "clear overbalance" to justify confidentiality on this ground.[119]

The right of privacy may provide a basis to shield disclosure of information under Government Code Section 7922.540. For example, relying on the right of privacy, the California Supreme Court ruled that disclosure of raw automated license plate reader data collected by a police department was protected from disclosure under this catch-all exemption.[120] The unaltered license plate scan data consisted of the plate number, date, time, and location information of each license plate record.[121] The Supreme Court found that the act of revealing the data would jeopardize the privacy of everyone associated with a scanned plate which was a significant threat to privacy because more than one million scans were conducted per week, and on that basis concluded that the public interest in preventing such disclosure "clearly outweighs the public interest served by disclosure of" these records. [122]

In a recent case during the COVID-19 pandemic, an appellate court upheld San Diego County's withholding of the specific location of COVID-19 outbreaks from a "confirmed outbreaks spreadsheet" disclosed to news media under the catchall exemption.[123] The county provided uncontradicted evidence from the public health officer that disclosing the exact name and address of an outbreak location would have a chilling effect on the public's willingness to cooperate with contact tracing efforts.[124] The court ruled that the value of the county's ability to conduct effective contact tracing clearly outweighed the public's interest in obtaining information about the exact outbreak locations, concluding that the evidence did not support the news media's contentions that a member of the public can better avoid COVID-19 infection if he or she knows of the particular locations where outbreaks occurred.[125]

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[119] *See, e.g., Michaelis, Montanari & Johnson v. Superior Court (City of Los Angeles Dept. of Airports)*, 38 Cal. 4th 1065 (2006) (holding under "catch-all" exemption that proposals for lease and development of a hangar facility at public airport were exempt from disclosure until City had completed negotiations where negotiations were part of the competitive process).

[120] *American Civil Liberties Union Foundation v. Superior Court*, 3 Cal. 5th 1032, 1043-1044 (2017).

[121] *Id.* at 1043.

[122] *Id.* at 1044.

[123] *Voice of San Diego v. Superior Court of San Diego County*, 66 Cal. App. 5th 669, 672-673 (4 Dist. 2021), review denied (Oct. 27, 2021).

[124] *Id.* at 692-693.

[125] *Id.*

Two other areas in which a public interest in nondisclosure has been upheld involve public records disclosure that would adversely affect the deliberative process of a local agency, or the personal security of a public official. In *Times Mirror Co. v. Superior Court*,[126] for example, the State's refusal to release the Governor's schedule and appointment calendar out of concern for the Governor's personal safety was upheld. Additionally, the State asserted that the disclosure of appointment calendars and schedules would "chill the flow of information" to the Governor and inhibit the free exchange of ideas in private meetings. The breadth of the request, however, may affect the balancing of interests. The public interest in nondisclosure may be less where the request is carefully focused and confined to a few documents.[127]

The Governor's office won another Public Records Act case on the "deliberative process privilege" and the exemption for "correspondence of and to the Governor"[128] justifications in 1998 when the office refused to disclose applications submitted to the Governor for an appointment to a vacancy on a board of supervisors.[129]

On the local level, a city's refusal to disclose the telephone records of council members was upheld to protect the same "deliberative process privilege."[130]

Far more often, however, courts have found the public interest in disclosure outweighs the interest in confidentiality. Similarly, the Attorney General has issued several opinions favoring disclosure. Some illustrative cases and Attorney General opinions in this area include the following:

- *Becerra v. Superior Court of City & Cty. of San Francisco (First Amendment Coalition et al.)*[131]

Penal Code Section 832.7 generally requires disclosure of all responsive records in the possession of the Department of Justice, regardless of whether the records pertain to officers employed by the department or by another public agency and regardless of whether the department or another public agency created the records. Government Code Section 7922.540 may apply to records that are subject to disclosure under Penal Code Section 832.7, but while an agency may invoke the exception based on the concern that segregating nonexempt from exempt information would be unduly burdensome, for the exception to apply to withhold responsive records the agency must establish a clear overbalance on

126 *Times Mirror Co. v. Superior Court (State of California)*, 53 Cal. 3d 1325 (1991).

127 *Id.* at 1344-46.

128 Gov't Code § 7928.000.

129 *California First Amendment Coalition v. Superior Court (Wilson)*, 67 Cal. App. 4th 159 (3 Dist. 1998); *see also Wilson v. Superior Court (Los Angeles Times)*, 51 Cal. App. 4th 1136 (2 Dist. 1997), as modified.

130 *Rogers v. Superior Court (City of Burbank)*, 19 Cal. App. 4th 469 (2 Dist. 1993).

131 44 Cal. App. 5th 897 (1 Dist. 2020).

the side of confidentiality. The Department of Justice failed to make such a sufficient showing, despite arguing they faced an "'onerous burden of reviewing, redacting, and disclosing records regarding other agencies' officers, which involves 'potentially millions of records'" to disclose records under Penal Code Section 832.7.

- *Connell v. Superior Court (Intersource, Inc.)*[132]

Records relating to unpaid state warrants are public records and must be disclosed. The public interest in disclosure outweighs the public interest in preventing possible fraud that could be assisted through the release of too much information about the State's warrant system. The fact that the request was made solely for commercial purposes and profit did not affect the balancing test.[133]

- *Copley Press, Inc. v. Superior Court (M.P.R. - a minor)*[134]

As a matter of law, no compelling reason exists to seal the court records of a settlement reached between the insurer for a school district and a minor student who was sexually assaulted at school. The amount of settlement is a matter of public record.

- *CBS, Inc. v. Block*[135]

The possibility that public disclosure of applications for concealed weapons permits would discourage the filing of new applications, or that such disclosure might increase applicants' vulnerability to attack, did not justify nondisclosure.

- *Braun v. City of Taft (Polston)*[136]

A City's nondisclosure of personnel records and letters appointing an employee and then rescinding the appointment was not justified by the theory that future applicants would not be candid if they knew personal information would be made public.

[132] 56 Cal. App. 4th 601 (3 Dist. 1997).

[133] Government Code section 7921.300 states that the Public Records Act "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure."

[134] 63 Cal. App. 4th 367 (4 Dist. 1998).

[135] 42 Cal. 3d 646 (1986).

[136] 154 Cal. App. 3d 332 (5 Dist. 1984).

- *Humane Society of U.S. v. Superior Court (The Regents of the University of California)*[137]

A public university's nondisclosure of certain information relating to an academic study was justified because the interest in protecting the academic research process outweighed the interest in public disclosure. Disclosure would "fundamentally impair" the academic research process and the public would suffer because the "'quantity and quality' of . . . academic research on important issues of public interest would be adversely affected."[138]

- *Los Angeles Unified School District v. Superior Court (Los Angeles Times)*[139]

A school district's decision to redact the names of teachers in a statistical model measuring each teacher's effect on students' standardized test scores was proper because the detrimental interference with the district's ability to function properly clearly outweighed the interest in public disclosure. The scores had already been released to the public categorized by school, grade, subject, and demographics; to require additional disclosure would sow discord among parents and teachers.

- *Long Beach Police Officers Assn. v. City of Long Beach (Los Angeles Times)*[140]

In a request by a newspaper for the names of peace officers involved in a fatal shooting, the California Supreme Court held that vague safety concerns – which apply equally to all officers involved in shootings that result in severe injury or death – were outweighed by the public's interest in such incidents.[141] The California Supreme Court held that in order for names of peace officers involved in such incidents to be exempt from disclosure, there must be a particularized showing of safety concerns regarding those officers.

- 90 Ops. Cal. Atty Gen. 40 (2007)

County recorder's accounting records that include a payment receipt showing the documentary transfer tax amount is subject to inspection under the Public Records Act. While the statutory scheme allows the documentary transfer tax to appear on a separate paper rather than on the recorded property conveyance

[137] 214 Cal. App. 4th 1233 (3 Dist. 2013).

[138] *Id.* at 1263.

[139] 228 Cal. App. 4th 222 (2 Dist. 2014).

[140] 59 Cal. 4th 59 (2014).

[141] Since the *Long Beach* decision, amendments to Penal Code Section 832.7 require that peace officer records relating to an incident involving the discharge of a firearm at a person by a peace officer or custodial officer or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury must be made available to the public under the Public Records Act.

document, that procedure provides only limited privacy protection for property owners and does not make the documentary transfer tax amount confidential.

- 81 Ops. Cal. Atty Gen. 383 (1998)

Claims for senior citizens' exemptions from assessment of a parcel tax levied by a school district are subject to inspection by members of the general public. The concern that the residents' privacy would be compromised by solicitors targeting senior citizens was insufficient to overcome the public interest in disclosure.

X. WHAT IS THE PROPER PROCEDURE FOR COMPLYING WITH A PUBLIC RECORDS ACT REQUEST?

The following is a brief outline of the proper response procedure, as required by Government Code Sections 7922.525 *et seq*.

A. The agency has ten calendar days to determine whether to grant the request. Grounds for refusing a request include:

- The request does not seek records which are "reasonably segregable" from records which are exempt from disclosure;[142]
- The request does not reasonably describe an identifiable record;[143]
- The request would require the agency to create new records not currently in existence; or[144]
- The request seeks records which are exempt from disclosure.[145]

Note, however, that the Public Records Act requires the disclosure of "reasonably segregable" portions of records. This means that if portions of a record are exempt and other parts of the same record are not, the non-exempt portions of the document must be disclosed.[146]

[142] Gov't Code § 7922.525.

[143] Gov't Code § 7922.530(a).

[144] Based upon the definition of "writing," Gov't Code § 7920.545, and the requirement that a requested record be "identifiable," Gov't Code § 7922.530(a). See note 22.

[145] Gov't Code § 7922.530(a).

[146] Gov't Code § 7922.525.

B. In "unusual circumstances" the agency may take up to an additional 14 calendar days to make the determination whether to grant the request. "Unusual circumstances" must be one of the following:

- The need to search for and collect the requested records from field facilities or other locations separate from the office processing the request;[147]
- The need to search for, collect, and examine a voluminous amount of separate and distinct records demanded in a single request;[148]
- The need for consultation with another agency having a substantial interest in the request or among two or more components of the agency having an interest in the subject matter of the request;[149] or
- The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.[150]

If the agency intends to use this additional time to respond, the agency must provide written notification to the requester that the additional time is required, the reason for the delay, and the date on which a determination will be given.[151]

C. When the agency has made a determination, the requester must be promptly notified of the agency's determination. This notification should be in writing and should include the following information:

- Whether the request is being granted or denied;[152]
- If the request is being granted, the estimated date and time when the records will be made available (or where the records are located on the agency's website);[153]

147 Gov't Code § 7922.535(c)(1).
148 Gov't Code § 7922.535(c)(2).
149 Gov't Code § 7922.535(c)(3).
150 Gov't Code § 7922.535(c)(4).
151 Gov't Code § 7922.535(b).
152 Gov't Code § 7922.535(a).
153 Gov't Code § 7922.535(a).

- If the request was made in writing and is being denied, in whole or in part, the response must be in writing and include the extent and the reasons for the denial;[154]

- The name and title or position of the person responsible for the denial;[155]

- The cost or an estimate of the cost of copying the records, if a copy is requested, and a request for pre-payment. Note that this is only the direct cost of duplication, or a statutory fee, if applicable, and does not include staff time to research, retrieve, or compile the records.[156] However, if the document requested is in electronic form, the agency may charge the full cost of reproducing the document when the record is one that is produced only at otherwise regularly scheduled intervals, or the request would require data compilation, extraction, or programming to produce the record.[157]

- The option to inspect the requested records at a mutually convenient time during office hours.[158]

- A requester who inspects a disclosable record on the agency's premises has the right to use their own equipment on those premises, within reasonable limits necessary to protect the safety of the records or to prevent unnecessary burden on the orderly function of the agency and its employees, without being charged any fees or costs, to photograph or otherwise copy or reproduce the record in a manner that does not require the equipment to make physical contact with the record.[159]

- If in response to a public records request the agency directs a member of the public to the location of that public record on its website, the agency must still promptly provide a copy of the record itself if the member of the public requests a copy due to his or her inability to access or reproduce the public record from the website.[160]

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154 Gov't Code §§ 7922.540, 7922.535.

155 Gov't Code §7922.540(b).

156 Gov't Code § 7922.530(a); *North County Parents Organization v. Dep't of Education*, 23 Cal. App. 4th 144 (4 Dist. 1994).

157 Gov't Code § 7922.575 ; *see also Nat'l Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488 (2020) (finding that retrieving and editing raw video footage in response to a public records request does not qualify as "data extraction" within the meaning of the Public Records Act and therefore public agencies may not recover their costs for that process).

158 Gov't Code § 7922.525.

159 Gov't Code §7922.530(c). However, Health and Safety Code Section 19851 provides separate procedures for obtaining duplicates of official copies of building plans.

160 Gov't Code §7922.545.

D. In addition to the above requirements, if the local agency determines that the request should be denied and the reason for the denial is not solely because of a statutory exemption, the agency must also:

- Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;[161]

- Describe the information technology and physical location in which the records exist;[162]

- Provide suggestions for overcoming any practical basis for denying access to the records or the information sought.[163]

  Alternatively, a local agency may forego these requirements if it instead makes available an index of the record.[164]

E. Upon payment of the cost of duplication, the agency must make the records "promptly available."[165]

F. Please note that the agency may not use this procedure to "delay or obstruct the inspection or copying" of public records.[166]

G. The local agency may provide guidelines for "faster, more efficient, or greater" access to records than provided by the Act.[167]

XI. WHAT ARE THE PENALTIES FOR FAILURE TO COMPLY WITH THE PUBLIC RECORDS ACT?

Unlike other open government laws, the Public Records Act does not criminally penalize a local agency for its failure to comply with the Act. Nor does it subject a local agency to money damages for a violation.[168] However, if a person requesting public records believes records have been improperly withheld, he or

[161] Gov't Code § 7922.600.
[162] Gov't Code § 7922.600.
[163] Gov't Code § 7922.600.
[164] Gov't Code § 7922.605.
[165] Gov't Code § 7922.530(a).
[166] Gov't Code § 7922.500.
[167] Gov't Code § 7922.505.
[168] *County of Santa Clara v. Superior Court (Naymark)*, 171 Cal. App. 4th 119, 130 (6 Dist. 2009).

she may ask a court to compel a local agency to disclose the records.[169] Any person who prevails in enforcing his or her rights under the Act in court is entitled to receive court costs and reasonable attorneys' fees.[170]

Courts have deemed a person to be the "prevailing party" for purposes of awarding costs and fees if filing of the lawsuit motivated the local agency to produce any documents.[171] The production of just one document can be sufficient to trigger an award of costs and fees.[172] In the past, where the court determined the litigation was not what ultimately motivated the release of records, costs and fees were denied.[173] One court held that an award of attorneys' fees was appropriate even though no additional records were produced as a result of the lawsuit.[174] The local agency in that case had repeatedly refused to accept a requester's oral request to inspect public records and forced the requester to make her request in writing, constituting a general denial of access to all public records and justifying an award of attorneys' fees under the circumstances.

XII. CONCLUSION

This Handbook provides a brief overview of some of the most important provisions of the Public Records Act that frequently arise for local government agencies. There are, however, many other provisions not covered by the scope of this Handbook. Additionally, each factual situation contains nuances specific to the particular situation that may impact the analysis. Because it is important to comply with the Public Records Act within a relatively short time frame, it is critical to seek the advice of counsel if there is any question as to the appropriate course of action.

169 Gov't Code §§ 7923.000 and 7923.005; see also *Stevenson v. City of Sacramento*, 55 Cal. App. 5th 545 (3 Dist. 2020) (appellant seeking injunctive relief under Gov't Code § 6258 [now §§ 7923.000 and 7923.005] may be required to post a bond pursuant to Cal. Civ. Code § 529 prior to the court issuing a preliminary injunction on appellant's behalf).

170 Gov't Code §7923.115.

171 *Los Angeles Times v. Alameda Corridor Transportation Authority*, 88 Cal. App. 4th 1381, 1391 (2 Dist. 2001); *Rogers v. Superior Court*, 19 Cal App. 4th 469, 482 (2 Dist. 1993); *Nat'l Conference of Black Mayors v. Chico Cmty. Publ'g, Inc.*, 25 Cal. App. 5th 570 (3 Dist. 2018) (newspaper that fought third party effort to prevent disclosure of public records sought by the newspaper was not entitled to attorneys' fees under the Public Records Act because newspaper did not bring an action against the City to compel disclosure under the Act).

172 *Los Angeles Times*, 88 Cal. App. 4th at 1392.

173 *Id.* at 1391; *Crews v. Willows Unified School District*, 217 Cal. App. 4th 1368, 1381-82 (3 Dist. 2013).

174 *Galbiso v. Orosi Public Utility District*, 167 Cal. App. 4th 1063, 1086-1089 (5 Dist. 2008).

PART TWO.

ELECTRONIC RECORDS

ELECTRONIC RECORDS

Advances in computer technology have significantly altered the method of communication with and between public officials and employees, but these technological developments have outpaced public records legislation. Email, electronic documents created on word processors, and web pages (including social media pages) do not readily fit into the categories of disclosure under decades-old laws.

The courts have had to fit the round peg of electronic documents into the square hole of state law on several occasions. In *Aguimatang v. California State Lottery*, the Court of Appeal rejected a defendant's argument that the plaintiff's computer records "were not made at or near the time of the event" and therefore did not qualify as an admissible "writing" under the evidentiary rules for business records.[175] The records were recorded on magnetic tape on the day the events of the case took place, but were not printed out until twenty-two months later. The court concluded that the magnetic tape, not just the printout, constituted a "writing" under the Evidence Code:

> Chanquin cites no authority holding that the retrieval, rather than the entry, of computer data must be made at or near the time of the event. Thus, although to qualify as a business record the "writing" must be made at or near the time of the event, "writing" is not limited to the commonly understood forms of writing but is defined very broadly to include all "means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof." Evid. Code § 250. Here, the "writing" is the magnetic tape. The data entries on the magnetic tapes are made contemporaneously with the Lotto transactions, hence qualify as business records. The computer printout does not violate the best evidence rule, because a computer printout is considered an "original." Evid. Code § 255.[176]

Similarly, in *People v. Martinez*, the California Supreme Court held that records from a state computer system of a defendant's prior criminal convictions were admissible as "official records" under the Evidence Code.[177]

In an attempt to catch up, in 2002 the Legislature enacted Assembly Bill 1962 ("AB 1962"), modifying the definition of "writing" under the Public Records Act and the Evidence Code to include "photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any

[175] *Aguimatang v. California State Lottery*, 234 Cal. App. 3d 769 (3 Dist. 1991).

[176] *Id*. at 798.

[177] *People v. Martinez*, 22 Cal. 4th 106 (2000).

tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof," and clarifying that the definition applied "regardless of the manner in which the record has been stored."[178]

The legislative reports for AB 1962 cited to *Aquimatang* and *Martinez* to establish that the amendment was declaratory of existing law. The reports also observed that in an earlier case, a court of appeal stated that the definition of writing in the Public Records Act was "intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed."[179] Under the 2002 legislation, emails and other electronic documents are records subject to disclosure and present their own unique issues for local governments.

In 2009, the State Legislature enacted rules relating to the discovery of electronically stored information, similar to the rules enacted by the Federal Government in 2006. In 2006, the Federal Rules of Civil Procedure were revised to require parties in federal lawsuits to address the production and preservation of electronic records.[180] Under the 2006 Rules, a public entity should have an electronic retention practice and policy that ensures that electronic documents relevant to federal litigation are appropriately preserved. Rule 37 of the Federal Rules of Civil Procedure authorizes federal courts to impose sanctions on parties and their attorneys who fail to comply with discovery obligations and court orders.

City websites, in turn, raise questions about public rights of access. Websites are an important means of providing residents with access to information. An improperly framed policy on website use, however, could result in violations of the Brown Act, infringe upon residents' First Amendment rights, and even violate disability access laws. Consequently, it is important to establish clear policies governing website design and use.

This Part Two on Electronic Records will begin by discussing the types of email that are public records, and what exemptions under the Public Records Act might justify nondisclosure. Other unique issues raised by the use of email are also explored, such as emails sent or received by public officials and employees on nongovernmental accounts, email threads and the potential risk of using email to create an unlawful serial meeting under the Brown Act. We then look at the Public Records Act requirements for disclosure of other types of electronic records, including Geographic Information Systems.

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[178] Stats. 2002, c. 945 (A.B. 1962—Hollingsworth) (amending Gov't Code § 6252 and Evid. Code § 250).

[179] Assembly Committee on Judiciary, Report on AB 1962, May 14, 2002 (citing *San Gabriel Tribune v. Superior Court (City of West Covina)*, 143 Cal. App. 3d 762, 774 (1 Dist. 1983)).

[180] Fed. R. Civ. P. 26.

The discussion then turns to other concerns raised by electronic records, including litigation discovery and metadata. We close with a discussion of city websites, including some of the legal issues that a public entity should consider when establishing and running a website.

I. EMAIL

Given that email can be a public record under Government Code Section 7920.545, in most circumstances a public entity is under an obligation to disclose email upon request. However, there are a number of complications, and despite AB 1962's attempt to respond to the changed method of communication, the bill provided nothing in the way of specifics.

A. Is the Email a Public Record?

Under the Public Records Act, certain exemptions might apply to justify withholding an email. But a fundamental question – one that must be considered before determining whether an exemption applies – is whether the document qualifies as a "public record" of the local agency.

(1) Personal Messages

Documents disclosable under the Public Records Act must be "prepared, owned, used, or retained by any state or local agency," and must contain information "relating to the conduct of the public's business."[181] Although this covers a very broad range of documents, it does not cover every document.

For example, emails on entirely personal subjects unrelated to local agency business would not relate to the conduct of the public's business, and therefore would not constitute "public records" under Section 7920.530.[182] A harder determination is whether a personal email that only mentions a city issue in passing would relate to the conduct of the public's business. In 2017, the California Supreme Court held the determination of whether a particular email qualifies as a public record, particularly for emails kept in personal accounts, will involve the consideration of a number of factors and may not always be clear.[183] The court suggested examining the content and context of the email, the purpose for which it was written and to whom, and whether the email was prepared by an employee purporting to act within the scope of his or her employment.[184]

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[181] Gov't Code § 7920.530(a).

[182] *City of San Jose*, 2 Cal. 5th 608, 618-19.

[183] *Id*. at 618.

[184] *Id*.

(2) Emails Sent or Received Using Personal Devices and Personal Accounts

Staff frequently asks whether emails sent or received on a nongovernmental account (such as personal Gmail, Yahoo Mail, or Hotmail accounts), or from a home computer or smartphone, and which pertain to local agency business, qualify as a public record. The California Supreme Court decided this very issue, and held in a unanimous decision that the presumptive right of access of the PRA extends to emails and texts sent or received on nongovernmental accounts, whether on private or government-issued devices, used by local agency employees or officials that relate to the business of that local agency.[185]

In *City of San Jose v. Superior Court*, a request for 32 categories of public records was filed with the City of San Jose.[186] The request included emails and text messages sent or received on private electronic devices used by the mayor, two City council members, and their staff.[187] The City argued such emails were outside the reach of the PRA, both because the emails were not directly accessible to the City and thus did not qualify as writings "prepared, owned, used or retained" by the City under the Section 7920.530 definition of "public records," and because neither employees nor officials are included within the governmental entities listed in the definition of "local agency" under Section 7920.510.[188] The Court found neither argument persuasive when considering the legislative intent of the PRA and the constitutional directive to a broadly construed right of public access.[189]

The California Supreme Court found no indication "the Legislature meant to allow public officials to shield communications about official business simply by directing them through personal accounts."[190] The court did acknowledge the inherent balance that must be struck between the public's rights of access and an individual employee's or official's right of privacy, and sought to offer some limited guidance for how searches should be conducted for records sent or received on nongovernmental accounts that pertain to the public's business.[191]

Foremost, the California Supreme Court stated it is the local agency itself that is in the best position to adopt policies that will reduce the likelihood of public records being held in the private, nongovernmental accounts of local agency employees

185 *Id*. at 629.
186 *Id*. at 614.
187 *Id*. at 615.
188 *Id*. at 619-20.
189 *Id*. at 620-21.
190 *Id*. at 624.
191 *Id*. at 627-29.

or officials that pertain to the public's business.[192] Barring such a policy, the court stated that a local agency's first step upon receiving a PRA request that implicates nongovernmental accounts should be to communicate the request to the individual or individuals in question.[193] A local agency may then reasonably rely on those individuals "to search *their own* personal files, accounts and devices for responsive material."[194] Citing both federal precedent under the FOIA and a holding by the Washington Supreme Court under its state public records law, the California Supreme Court also discussed an employee or official submitting an affidavit that would give the local agency, requester, and ultimately the trial court reassurance that responsive records were appropriately searched on nongovernmental accounts.[195] Such an approach also strikes "an appropriate balance" with the individual's right of privacy in their personal affairs.[196]

The California Supreme Court's ruling in *City of San Jose v. Superior Court* is likely to have far-reaching consequences for public agencies; however, a number of questions remain unanswered by the court's decision. Since the City of San Jose refused to produce any emails from a nongovernmental account in response to the original PRA request, disputes over the content of specific emails and whether or not they fall under the definition of "public record" will likely be decided in subsequent proceedings.[197] Similarly, the decision does not address at what point a suggested search in response to a PRA request would become an unwarranted invasion on the privacy of a local agency employee or official.[198] In responding to requests for communications sent or received on an individual's nongovernmental account, it is advisable to consult with your legal counsel. Counsel should also be consulted if an agency requires access to potentially responsive documents or communications that are on an employee's private device and not accessible to the agency (for example, documents saved on an employee's home computer hard drive). Our office is also available to help draft policies on how to reduce the likelihood that public records will be held in an agency employee's or official's private nongovernmental account, how to conduct searches into nongovernmental accounts when necessary, and how to work with employees so the employees properly search their private, nongovernmental computers and smartphones, when necessary.[199]

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[192] *Id*. at 628.

[193] *Id*.

[194] *Id*.

[195] *Id*.

[196] *Id*.

[197] *Id*. at 618.

[198] *Id*. at 627.

[199] Private, nongovernmental devices should never be seized by the agency, or accessed without the employee's consent, even if the agency believes the device contains material responsive to a PRA request.

B. Some Email may be Protected by the Deliberative Process Privilege or Mental Process Principle

Emails differ from traditional printed documents: they may be prepared quickly and sent without proofreading, they may be conversational, or they may substitute for face-to-face or telephone communications. As described by the California Supreme Court, "the ease and immediacy of electronic communication has encouraged a commonplace tendency to share fleeting thoughts and random bits of information, with varying degrees of import, often to broad audiences."[200] As a result, they often reflect preliminary ideas and concepts, and may be subject to the deliberative process privilege, which was mentioned earlier in the discussion on the Public Records Act.[201] Alternatively, the mental process principle may provide a basis for withholding emails. Before applying the deliberative process privilege to emails sent to a legislative body member, you should familiarize yourself with the Brown Act requirements regarding disclosure, discussed below in Section G.

The deliberative process privilege and the mental process principle are very similar, and sometimes courts blur the distinction. Generally speaking, the deliberative process privilege is targeted at protecting from disclosure the decision making process of governmental agencies. Without that protection, candid discussion may be discouraged within an agency, thus undermining its ability to perform its functions.[202] It is sometimes referred to as the "executive privilege,"[203] but has been applied to records of both the executive branch (e.g., the governor) and the legislative branch (e.g., a city council).[204] The mental process principle, on the other hand, appears to apply only to the members of an agency's legislative body when those members are enacting legislation, and protects from disclosure those records that would allow an inquiry into the "subjective motives or mental processes of legislators."[205] The deliberative process privilege uses a balancing test, whereas the mental process principle does not, making the mental process principle exemption less subjective.[206]

(1) Deliberative Process Privilege

Although the Public Records Act does not expressly contain a deliberative process exemption, the California Supreme Court held in 1991 that public records

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200 *Id*. at 618.

201 See pages 20 and 24 of this Handbook.

202 *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1342 (1991).

203 *Sutter's Place v. Superior Court (City of San Jose)*, 161 Cal. App. 4th 1370, 1378 (6 Dist. 2008).

204 *Times Mirror Co.*, 53 Cal. 3d at 1345-46 (governor's calendars and schedule); *Rogers v. Superior Court (City of Burbank)*, 19 Cal. App. 4th 469, 479 (2 Dist. 1993) (city council phone records).

205 *Sutter's Place*, 161 Cal. App. 4th at 1377.

206 *Id.* at 1377, 1379.

may be withheld on deliberative process grounds.[207] The deliberative process privilege arises under the "catch-all" exemption contained in Section 7922.540 of the Government Code. Under the "catch-all" exemption, a public agency may justify nondisclosure by showing "that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." To apply the deliberative process privilege:

- First, consider whether the record falls within the scope of the privilege. Generally, records that are predecisional and deliberative (opinion) fall within the scope, but some courts have not strictly applied a predecisional requirement and have permitted purely factual material that exposes the deliberative process to fall within the privilege.[208]

- Second, identify the public interest served by nondisclosure of the record. Four public interests that have been identified by the courts are:

  (1) Protection of the agency's decision-making process so that candid discussion within the agency is not discouraged;[209]

  (2) Protection of certain limited communications with members of the public to ensure that the local agency receives the information it needs to make decisions and otherwise function;[210]

  (3) Protection against confusion caused by premature exposure of the public to internal agency discussions before a policy is finalized;[211]

  (4) Protection of the integrity of the decision-making process itself by confirming that "officials should be judged by what they decided, not for matters they considered before making up their minds."[212]

- Third, identify the public interest served by disclosure of the record. Courts have emphasized that a primary benefit of disclosing a local agency's records to the public is to promote government accountability. The public and the media have a legitimate need to

[207] *Times Mirror Co.*, 53 Cal. 3d at 1347.

[208] *Rogers*, 19 Cal. App. 4th at 479-480 (rejecting a predecisional requirement and withholding from disclosure pure facts, that is, telephone numbers called by staff and city council members).

[209] *Times Mirror Co.*, 53 Cal. 3d at 1342.

[210] *Id.* at 1344-45 (disclosure of governor's schedule and appointment calendar would "chill the flow of information" to the governor and inhibit the free exchange of ideas in private meetings).

[211] *California First Amendment Coalition v. Superior Court (Pete Wilson)*, 67 Cal. App. 4th 159, 170 (3 Dist. 1998).

[212] *Id.* (internal quotations and citations omitted).

know whether government officials are performing their duties in a responsible and diligent manner.[213] "Such access permits checks against the arbitrary exercise of official power and secrecy in the political process."[214]

- Fourth, balance the two public interests, and withhold the record from disclosure only if the identified public interest justifying nondisclosure "clearly outweighs" the public interest justifying disclosure.[215] In balancing the scales, the weight of an identified public interest in disclosure is "proportionate to the gravity of the governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate."[216] Because the public interest in nondisclosure must "clearly outweigh" the public interest in disclosure, if the interests are just about equal, the scales tip in favor of disclosure.

In *California First Amendment Coalition v. Superior Court (Wilson)*, the plaintiffs sought disclosure of records containing the names and qualifications of applicants for a temporary appointment to a local board of supervisors.[217] The Governor's office looked extensively into the applicants' backgrounds to determine whether they were qualified for the position. The court upheld nondisclosure of the records under the deliberative process privilege. It reasoned that if the deliberative process privilege did not apply, the Governor would never be able to perform background checks, which is an essential part of selecting an applicant for a government position.[218] In balancing the interests, the court concluded that the public's interest in disclosure of background information revealed in confidence by unsuccessful applicants was not significant and that the public interest in learning about the successful applicant's background would be satisfied after the appointment.[219]

The *First Amendment Coalition* case shows that the deliberative process privilege can apply to communications where the public interest in disclosure of deliberations prior to a decision is not significant and the outcome of those deliberations is a matter of public knowledge. For instance, the public could ultimately learn a council member's views about an item the City council is deliberating by attending the public meeting on the item. In such a case, emails

213 *Times Mirror Co.*, 53 Cal. 3d at 1345.

214 *CBS v. Block*, 42 Cal. 3d 646, 651 (1986).

215 Gov't Code §7922.000.

216 *Citizens for a Better Environment v. Department of Food & Agriculture*, 171 Cal. App. 3d 704, 715 (3 Dist. 1985).

217 *California First Amendment Coalition*, 67 Cal. App. 4th at 164.

218 *Id.* at 171-72 (quoting *Times Mirror Co.*, 53 Cal. 3d 1325, 1345).

219 *Id.* at 173-74.

discussing preliminary ideas and concepts about the item may be subject to the deliberative process privilege.

Another example is provided by *Times Mirror Co. v. Superior Court*.[220] In that case, the Los Angeles Times sought copies of the governor's appointment calendars and argued that "in a democratic society, the public is entitled to know how [the governor] performs his duties . . . ."[221] Disclosure of who the governor met with would reveal who was influencing his decisions. The governor argued disclosure of his calendar would reveal his deliberative process, and could discourage certain people from meeting with him. In balancing these interests, the California Supreme Court concluded that nondisclosure was justified, reasoning that "if the public and the governor were entitled to precisely the same information, neither would likely receive it."[222] The court added that the "massive weight" of the request (five years' worth of calendars), outweighed whatever merit there was in favor of disclosure.[223] The court noted, however, that there may be circumstances under which the public interest in specific information is more compelling, and such a specific, focused request might tip the scales in favor of disclosure.[224]

Courts have emphasized the need for evidence in order to satisfy the local agency's burden of proof. In *Citizens for Open Government v. City of Lodi*, the City of Lodi withheld from the administrative record emails between City staff and the City's consultants regarding preparation of a revised EIR.[225] Citizen groups sued, challenging in part the administrative record. Lodi argued the emails were exempt from disclosure pursuant to the deliberative process privilege because disclosure would hamper "candid dialogue and a testing and challenging of the approaches to be taken."[226]

The Court of Appeal disagreed, finding that Lodi had failed to establish the conditions for creating the privilege, because Lodi had done nothing more than cite the policy behind the deliberative process privilege without explaining why the facts in this particular case justified invocation of the privilege.[227] However, because the Court of Appeal was deciding the case under the California Environmental Quality Act ("CEQA"), and not the Public Records Act, the Court found there was no prejudice and refused to reverse the lower court's ruling.[228]

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220 *Times Mirror Co.*, 53 Cal. 3d at 1344.

221 *Id.*

222 *Id.* at 1345.

223 *Id.*

224 *Id.* at 1345-1346.

225 *Citizens for Open Government v. City of Lodi*, 205 Cal. App. 4th 296, 305 (3 Dist. 2012).

226 *Id.* at 306.

227 *Id.* at 307.

228 *Id.* at 311.

In comparison, the public entity in *Humane Society of the United States v. Superior Court*, provided detailed declarations from an employee and expert explaining why disclosing certain research documents would harm the research process.[229] The Humane Society sought disclosure of certain records and communications related to the preparation of a study by the University of California involving housing of egg-laying hens, and the University claimed various privileges including deliberative process.

The detailed declarations of the research project director submitted by the University seemed to sway the court; the court quoted them at length in the decision.[230] One declaration explained how researchers at the University tried new ideas and approaches, frequently brainstorming by email, using shorthand expressions of incomplete thoughts. To be efficient, the researchers did not keep detailed records of how they communicated, and some lines of inquiry that began in email were further discussed and dismissed as part of hallway conversations. Because of that, much of what they said in emails would be easily misinterpreted. Additionally, mistakes along the way are part of the research process. The quality and quantity of work would be stifled if researchers were aware that their informal communications would be made available broadly. While the Humane Society tried to characterize the declaration as mere speculation, the court credited the declarant as an expert in the field, giving the declaration great weight.[231] In balancing the public interests, the court concluded that disclosure of the emails "would fundamentally impair the academic research process."[232]

Given the pervasiveness of email today, the deliberative process privilege seems well-suited to protect predecisional email communications from disclosure. Nevertheless, California courts have approved the use of the deliberative process privilege sparingly, and require local agencies to provide particularized factual evidence in support of its use. Prior to invoking this privilege, it is advisable to consult your legal counsel.

(2) Mental Process Principle

The Public Records Act exempts from disclosure those records that are exempted or prohibited from disclosure pursuant to federal or state law.[233] Under California state common law, a court is prohibited from inquiring into the motives or

[229] *Humane Society of the United States v. Superior Court (Regents of the University of California)*, 214 Cal. App. 4th 1233, 1240 (3 Dist. 2013).

[230] *Id.* at 1241-1244.

[231] *Id.* at 1258.

[232] *Id.* at 1263.

[233] Gov't Code § 7927.705.

subjective mental processes of legislators in enacting a particular piece of legislation except as those motives may be disclosed on the face of the legislative acts, or inferred from their operation.[234] This "mental process principle" permits a local agency to withhold public records that would reveal the mental processes or subjective motives of its legislative body members when they are acting in a legislative capacity. Unlike the deliberative process privilege, which relies on a balancing test,[235] records reflecting the "mental processes" of legislators are not subject to a balancing test.[236]

Under applicable circumstances, the mental process principle may be used to justify nondisclosure of emails of legislative body members, such as city council members. For example, emails sent or received by a city council member could arguably be withheld under the mental process principle when they: (1) discuss the reason the member voted for or against a particular ordinance, (2) involve the gathering of information on which the member based their legislative decision, or (3) expose the motives for the member's vote on a legislative matter.

C. Exception for Notes, Drafts and Interagency/Intra-agency Memoranda

The deliberative process privilege may help a local agency keep sensitive emails from public disclosure, but a far more effective tool is to simply have a policy in place to regularly purge intra-agency or interagency emails that are not subject to the local agency's records retention schedule. Under the Public Records Act, "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business" may not be subject to disclosure.[237] A written policy of deleting emails more than 120 days old (or some similar duration) would help establish that emails are not retained "in the ordinary course of business." A software modification that automatically deletes older emails would ensure that they are not retained, provided staff is notified of the pending purge and takes steps to retain those emails that, based on their content, must be retained under the local agency's records retention schedule.

There are a few caveats, however. First, note that deleting an email is not the end of the story. Popular email programs such as Microsoft Outlook have "deleted items" folders that retain messages for a time after "deletion," in order to give the user an opportunity to "undo" an accidental deletion. If a local agency received a request for an email that had been deleted, but was still on the computer in the "deleted items" folder, it technically would still be in the

234 *Sutter's Place*, 161 Cal. App. 4th at 1375.

235 Gov't Code § 7922.540.

236 *See Times Mirror Co.*, 53 Cal. 3d at 1339 fn. 9-10 (noting that these records might arguably be exempt under the mental process principle through operation of Section 7927.705).

237 Gov't Code § 7927.500. For a discussion on the conditions that must be met to utilize Section 7927.500, see pages 10-12 of this Handbook.

possession of the agency and may be subject to disclosure. To eliminate this potential issue from arising, an agency must ensure that the deletion becomes final and irreversible. If the agency desires or is required to save a copy of certain emails, then it should print and file such emails, or store them electronically in a location that is not subject to automatic purging.

Second, note that the Section 7927.500 exemption is not absolute. The full text of the exemption provides that drafts, notes, and inter/intra-agency memoranda are nondisclosable "provided that the public interest in withholding those records clearly outweighs the public interest in disclosure." Accordingly, even emails "that are not retained by the public agency in the ordinary course of business" may be subject to disclosure, if the records were not deleted prior to receipt of the Public Records Act request, and a reviewing court concludes that the public interest in disclosure is not "clearly outweighed" by the interest in nondisclosure. This is a significant hurdle for a public agency to overcome.

D. Additional Exemptions that may be Applicable to Email

In addition to those described above, there are a number of other exemptions that may be applicable to emails exchanged between employees or officials of a public agency. For example, emails to and from legal counsel may be protected by the evidentiary privileges recognized under Section 7927.705; certain personal financial data may be exempt under Section 7925.005; and personnel and medical files may be withheld under Section 7927.700. The same care should be used in reviewing responsive emails as any other material that may be subject to disclosure, and Part One, Section IX (What Public Records are Exempt from Disclosure under the Public Records Act?) of this Handbook should be consulted for additional information.

E. The Problem with Threads

Emails elicit a response. The response typically elicits another response. If multiple people received the message, responses from all of the recipients are common. And, in all of those responses, the original message is typically quoted, either in part or in full, generating a "thread" of messages. The question necessarily arises, when there is a thread of 20 messages, and one of them is responsive to a public records request, must the other 19 messages also be produced? For example, a resident makes a request for all emails discussing the possible construction of a new library and locates the following thread:

Original Message
From: City Clerk
To: Joe Employee, Jane Employee, City Manager
Date: April 2, 2022 12:15 p.m.
Subject: RE: Question

More money and lots more money.

Original Message
From: City Manager
To: Joe Employee, Jane Employee, City Clerk
Date: April 2, 2022 12:10 p.m.
Subject: RE: Question

I didn't know we were discussing compensation. What are the proposals?

Original Message
From: City Clerk
To: Joe Employee, Jane Employee, City Manager
Date: April 2, 2022 12:05 p.m.
Subject: RE: Question

I think the study session on the new library is next month. It will be at the same meeting as we discuss Council compensation.

Original Message
From: Joe Employee
To: Jane Employee, City Clerk, City Manager
Date: April 2, 2022 12:00 p.m.
Subject: Question

Do you know when the Council is going to have a study session on possibly constructing a new library?

Only the oldest two messages (sent at 12:00 and 12:05) refer to the study session on the library construction. The rest of the messages are on a different topic, a topic that may be politically sensitive. Nevertheless, all of the responses to the original message included a copy of the original message and every message that followed it, and so they all contain a reference to the library construction. As a result, it would be difficult to argue that only the 12:00 and 12:05 messages should be disclosed if this is the only copy of the email available.

On the other hand, if an earlier version of the email containing only the oldest two messages is available, a local agency could argue that the thread containing all five messages may be withheld. So long as the earlier version of the two responsive emails is disclosed, the email discussing employee compensation is only a duplicate of the oldest two messages. The subsequent messages are not responsive to the request. The Public Records Act does not require disclosure of all duplicates of a responsive record. Keep in mind, however, two important considerations. First, while one appellate court has ruled that non-responsive information may be redacted from emails exchanged between two agency employees, if challenged in court, a public agency will have to explain in detail

the information that was redacted.[238] Second, in litigation, a different standard may apply and all versions of the email may have to be disclosed.

One way to avoid the problem is to configure email so previous messages are not quoted in replies sent by staff. Under the example above, if the local agency did not allow quoted messages in replies, the first two messages mentioning the library construction would be disclosed as "stand-alone" emails, but the later messages regarding compensation would not because they would no longer be integrated into the prior emails. Accordingly, a city should balance its concern in avoiding unwanted disclosures against the usefulness of having an entire thread available, and may wish to consider configuring email programs to eliminate quoting emails in replies.

F. Risk of Serial Meetings

Beyond the Public Records Act concerns, the use of email presents a significant opportunity for "serial meetings" prohibited by the Brown Act. A serial meeting is a series of meetings or communications not held at a noticed, public meeting in which ideas are exchanged among a majority of a legislative body 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."[239] Prior to January 1, 2009, the Brown Act specifically forbade the use of technological devices to conduct those communications. In interpreting the prior version of this Brown Act provision, the California Attorney General opined that email is one of these "technological devices."[240] The 2009 amendments to the Brown Act provisions regarding serial meetings included the removal of the phrase "technological devices" and other specific types of communications, and the insertion in their place of "a series of communications of any kind, directly or through intermediaries."[241] At the time of the 2009 amendments, it was considered unlikely that the legislature, in omitting the phrase "technological devices" and expanding the scope to any kind of communication, intended to exclude email from coverage under the Brown Act. Subsequently, Assembly Bill 992, passed in 2020 and effective January 1, 2021, amended certain provisions of the Brown Act until January 1, 2026 to clarify allowable uses of social media under the Act. As amended by AB 992, the Brown Act regulates social media posts to prevent serial meetings.[242]

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238 *American Civil Liberties Union of Northern California v. Superior Court (California Dept. of Corrections and Rehabilitation)*, 202 Cal. App. 4th 55, 82-86 (1 Dist. 2011).

239 Gov't Code § 54952.2(b)(1).

240 84 Ops. Cal. Atty Gen. 30 (2001).

241 Stat. 2008, c. 63, sec. 3 (S.B. 1732 -- Romero (amending Gov't Code § 54952.2).

242 Stat. 2020, c. 89, sec. 1 (A.B. 992 -- Mullin (amending Gov't Code § 54952.2). For further discussion of use of social media and the Brown Act, please see the *2023 Brown Act Handbook*, Part One, Section VII(D) (© 2023 Richards, Watson & Gershon).

The primary mechanism for creating serial meetings via email is through the use of "reply all." For example, if a public employee sends an email to an entire city council, and then one of those council members replies to the entire list of recipients, then a communication would have taken place between a majority of the city council. If the purpose of the council member's reply was to "discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body," the communication would constitute a serial meeting in violation of the Brown Act.[243] Accordingly, public officials must endeavor to use "reply all" sparingly, if at all. A "reply all" congratulating a council member for receiving an award would be permissible; a "reply all" expressing an opinion about an issue within the subject matter jurisdiction of the City council would not.

G. Disclosure Requirements for Documents at Meetings

Although the deliberative process privilege may apply to many emails, note that the privilege is unlikely to apply if an email concerns an issue under consideration by a legislative body and a majority of the body receive the email. The Brown Act states that notwithstanding the "catch-all" exception in the Public Records Act, "or any other law," any writings distributed to a majority of a legislative body in connection with a matter subject to discussion or consideration at an open meeting of the body are disclosable.[244] The statute goes on to clarify that it does not overrule the exceptions for drafts, documents related to pending litigation, personnel files, medical files, and a number of other exceptions, but it does expressly overrule the "catch-all" provision on which the deliberative process privilege is based. Note that Section 7927.705, under which the mental process principle is applied, is not overruled by the Brown Act, and still would be applicable.[245]

Unlike records disclosable under the Public Records Act, which gives public entities ten days to respond to a request and additional time to produce the documents, a public agency must produce documents under this section of the Brown Act "without delay."[246] In addition, if the email is created by the public agency or a member of the legislative body, it must be made available for inspection *at the meeting*.[247] Emails not drafted by the public agency or its legislative body must be made available after the meeting.

This is particularly relevant to emails sent to council members on smartphones, iPads and similar devices, given that a council member could potentially send an

[243] Gov't Code § 54952.2(b)(1).

[244] Gov't Code § 54957.5.

[245] Gov't Code 54957.5(a).

[246] *Id.*

[247] Gov't Code § 54957.5(c).

email to other council members while a meeting is going on. Under this section of the Brown Act, an attentive member of the public could insist that they be provided a copy of that email, at the meeting, if the council member sent it to a majority of the other council members. Accordingly, members of a legislative body should consider carefully the consequences of sending an email via smartphone, iPad or other device at a public meeting prior to doing so.

The informality of emails makes them particularly prone to statements that would not be put into conventional written documents. The only certain means of avoiding unwanted disclosure, of course, is simply not to write the email in the first place.

II. DOCUMENTS CREATED USING WORD PROCESSORS, GIS AND OTHER SOFTWARE

A. Disclosure Requirements

(1) Public Records Act

Electronic records are subject to disclosure under the Public Records Act pursuant to Sections 7922.570-7922.585 of the Government Code. A public agency that has information constituting a public record in an electronic format must make that information available in electronic form upon request.[248] An agency is not required to reconstruct an electronic record if it is no longer available in that format.[249] An agency may inform a requester that a requested record is available in electronic format, but the agency is prohibited from adopting a policy of only making information available in electronic format.[250]

On the other hand, not every piece of data stored on a computer readily fits the definition of "record." Unlike word processing documents, information stored in a database or a spreadsheet, for example, may only be displayed in response to the user entering a formula or query. For such data, there are special statutory provisions. With conventional (printed) documents, the public agency may only charge for the direct cost of duplication, not including staff time to research, retrieve or compile the records.[251] For electronic records, however, the agency may charge the full cost of reproducing the document if the record is one that is otherwise produced only at regularly scheduled intervals, or the request would

[248] Gov't Code § 7922.570.

[249] Gov't Code § 7922.580.

[250] Gov't Code § 7922.570(c), 7922.580(b).

[251] Gov't Code § 7922.530(a); *North Cnty. Parents Organization v. Dept. of Education*, 23 Cal. App. 4th 144, 147-148 (3 Dist. 1994) (direct costs do not include the ancillary tasks necessarily associated with the retrieval, inspection, and handling of the file from which the copy is extracted).

require data compilation, extraction, or programming to produce the record.[252] However, in *National Lawyers Guild v. City of Hayward*, the California Supreme Court recently held that the phrase "data extraction" in this context does not cover the costs of redacting exempt material from digital police body camera footage.[253] The court reasoned that data "extraction" is a technical process of retrieving responsive information to construct a new record, while redacting exempt material from electronic records is similar to other redactions for which costs are not recoverable.[254] As such, public agencies may not recover costs for redacting exempt material from otherwise disclosable electronic records.

Many public agencies now possess Geographic Information Systems ("GIS") that allow them to collect, manage and analyze large volumes of geographically referenced information. Whether this electronic information is a public record that is subject to disclosure has been the subject of controversy, mainly because public agencies have charged licensing fees to businesses that wanted a copy. Public agencies have argued that the monies recovered from those licensing fees are necessary to support the development and maintenance of the GIS.

In 2013, the California Supreme Court disagreed with that argument. In *Sierra Club v. Superior Court*, the Court held that a GIS-formatted database is a public record that, unless otherwise exempt from disclosure, must be produced upon request and the local agency may only charge the actual cost of duplication.[255] The County of Orange had argued that its GIS database was not a public record. The court disagreed that former Section 6254.9 (now Section 7922.585) excluded a GIS database from the Public Records Act's disclosure requirements, and concluded that, because the County had not claimed any exemption to justify nondisclosure, the County of Orange could only charge the direct cost of duplication for its GIS database.[256]

Note, however, that the California Supreme Court was careful to distinguish the database from the software – the mapping system itself was exempt from disclosure under another provision in the Public Records Act.[257] The statute expressly exempts computer mapping systems, computer programs, and computer graphic systems, and states that nothing in the statute is intended to

[252] Gov't Code § 7922.575.

[253] 9 Cal. 5th 488 (2020).

[254] *Id.* at 500.

[255] *Sierra Club v. Superior Court (County of Orange)*, 57 Cal. 4th 157, 161 (2013).

[256] *Id.* at 175, 176

[257] Gov't Code § 7922.585(b) ("Computer software developed by a state or local agency is not itself a public record under this chapter.").

limit any copyright protections. Accordingly, a requester may not seek to obtain the software that creates the records, only the records themselves.[258]

The Public Records Act not only exempts computer software as discussed above, but also a public agency's information security record, if that record has the potential to reveal vulnerabilities or otherwise increase the possibility of an attack on that public agency's information technology system.[259] However, the Public Records Act also requires local agencies (except local educational agencies) to create a catalog of "enterprise systems," that must be publicly available on the local agency's website and updated annually.[260] An enterprise system is defined as a "software application or computer system that collects, stores, exchanges and analyzes information" used by the local agency as a system of record, and acts either across multiple agency departments, or collects information about the public.[261] While Section 7922.710 requires a city to list these enterprise systems as defined, it does not require a city to disclose the information collected, stored, exchanged and analyzed by the software application or computer system if that information is otherwise exempt under the Public Records Act. Further, a number of enterprise systems may be excluded from a local agency's listed catalog, such as systems related to 911 dispatch or emergency services, information technology security systems (including firewalls and other cybersecurity systems) and infrastructure and mechanical control systems (for example, systems that manage water or sewage functions).[262]

Note that the Public Records Act does not contain exceptions for public records created on social media.[263] If a social media post is "prepared, owned, used, or retained by any state or local agency," and contains information "relating to the conduct of the public's business,"[264] it is a public record and is thus subject to disclosure under the Public Records Act, and should also be retained accordingly. This applies to social media posts made by a public entity, including posts by public entity employees and/or officials, and may also apply to posts made by members of the public on social media pages operated by the public entity.

Depending upon the volume of social media posts a public entity produces, it may be difficult to review all posts and comments made on the public entity's social media page to determine whether any given post meets the legal definition of a public record. Additionally, there may be practical issues with

258 *Sierra Club,* 57 Cal. 4th at 170-171; *see also* Gov't Code § 6254.9(b).

259 Gov't Code § 7929.205.

260 Gov't Code §§ 7922.710 and 7922.715.

261 Gov't Code §§ 7922.700 and 7922.705 (also defining "system of record" as "a system that serves as an original source of data within an agency").

262 See pages 138-139 of this Handbook.

263 Social media is subject to regulation under the Brown Act, pursuant to Assembly Bill 992, enacted in 2020 and effective January 1, 2021 through January 1, 2026. See Stat. 2020, c. 89, sec. 1 (A.B. 992 -- Mullin (amending Gov't Code § 54952.2).

264 Gov't Code § 7920.530.

retaining social media records. Capturing and archiving images of social media posts may not be a sufficient retention method, because the image would not preserve metadata, subsequent comments, and other interactive features. Archiving these features can be challenging, because social media posts typically are not hosted or archived on storage systems owned by the public entity. Creating independent storage systems for all social media posts may be cost-prohibitive for public entities.

These factors can make it difficult to determine which social media posts need to be retained, and whether a public entity's retention procedures adequately capture an entire social media record. Any concerns about retaining specific social media records should be discussed with the City attorney.

(2) Federal Rule 26

In 2006, revisions to Rule 26 of the Federal Rules of Civil Procedure took effect that require parties in federal court to address the production and preservation of electronic records during the discovery phase of litigation. These rule changes did not require a local agency to alter its routine management or storage of electronic information, but does illustrate the importance of having formal written rules for retention of potentially relevant records and data when litigation occurs. It is firmly established that a duty to preserve evidence arises from the moment litigation is "reasonably anticipated."[265] Once the duty to issue a legal hold is triggered, the party "must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents."[266]

Discovery is the process by which parties involved in litigation in either state or federal courts obtain information from other parties. Under Rule 26, parties in a federal lawsuit may obtain discovery regarding any matter that is relevant to a claim or defense, so long as it is not privileged. According to Rule 26(a) what can be discovered includes "documents," "tangible things," and "electronically stored information," which is broadly defined as "any type of information that is stored electronically."

Rule 26 regulates discovery in three major ways:

a. Parties must address electronic discovery issues at the beginning of litigation, including the form in which electronic information will be

[265] *Rockman Company (USA), Inc. v. Nong Shim Company, Ltd.*, 229 F. Supp. 3d 1109, 1122 (N.D. Cal. 2017).

[266] *Zubulake v. UBS Warburg, LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004); accord *In re Napster Inc. Copyright Litig.*, 462 F. Supp. 2d 1060, 1070 (N.D. Cal. 2006).

produced to the other party, the preservation of electronic information, and claims of privilege for electronic information;[267]

b. Parties must produce relevant information from electronic sources that are "reasonably accessible," but may not have to produce information from older or backup systems if production would impose an undue burden or cost. The requesting party can, however, overcome a showing of undue burden or cost if they can establish "good cause" for doing so;[268] and

c. Privileges are retained for documents inadvertently disclosed. Such documents may be recalled by the disclosing party. In such cases, the privilege is not waived.[269]

The discovery rule does not require a local agency to alter its routine handling of electronically stored information prior to when litigation can reasonably be anticipated. The drafters of the rules recognized that electronic information might be routinely altered, purged or overwritten as part of a system's operation. Under 2006 revisions to Rule 37, the routine purging of outdated electronic information, including the "alteration or overwriting of information…to meet the party's technical and business needs" was permissible, if it was done in accordance with other laws, such as the records retention laws in Government Code Sections 34090-34090.8. Those sections permit a city, for example, to destroy certain city records that are "no longer required" and are more than two years old if authorized by a city council resolution and the written consent of the city attorney. Records that may not be destroyed include: real property title records, court records, records required to be kept by statute, records less than two years old, and the minutes, ordinances, or resolutions of the legislative body, city board, or commissions.

In 2015, the "routine, good faith operation" language was deleted from Rule 37. The revised rule provides limited sanctions for parties who inadvertently cause electronically stored information to be lost because of their failure to take reasonable steps to preserve the information. However, the Advisory Committee Notes to Rule 37(e) point out that "the routine, good-faith operation of an electronic information system would be a relevant factor for the court to consider in evaluating whether a party failed to take reasonable steps to preserve lost information."

Once litigation can be reasonably anticipated, a local agency has a duty to preserve potentially relevant information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems in

[267] Fed. R. Civ. P. 26(f)(3)(C).

[268] Fed. R. Civ. P. 26(b)(2)(B).

[269] Fed. R. Civ. P. 26(b)(5)(B).

order to preserve information potentially relevant to the litigation. In such cases, it must take "reasonable steps" to prevent the loss of electronically stored information. In evaluating whether a city's preservation attempts were reasonable, courts should take into account the limited staff and resources that governmental parties may have to devote to preservation efforts.[270] Note that electronically stored information lost despite a city's reasonable preservation efforts—such as through the failure of a cloud-based storage service, a malignant software attack, or accidental damage to physical hardware—will not give rise to sanctions under Rule 37.

These rules on document preservation highlight the importance of having a written document retention policy. A written policy will show what operations are routine. This will help protect a local agency from sanctions if litigation occurs and allow its attorneys to discuss its routine computer operations with the court and other parties. Such a policy should set specific limits for how long information is retained and specific procedures for the routine destruction of electronic data. The policy should also address the steps that the agency will take to preserve potentially relevant information when litigation is reasonably anticipated. These policies should be in accordance with Government Code Sections 34090-34090.8 and any other applicable laws governing the preservation of city records.

The other discovery rules further illustrate how a written policy will aid a local agency in litigation. When litigation begins in federal court, Rule 26(f) requires the parties' lawyers to confer about "any issues about disclosure, discovery, or preservation of electronically stored information." No part of electronic discovery is more important for determining the scope of the preservation obligation than the pre-scheduling conference meet and confer provided under Rule 26(f). Rule 26(f) explicitly directs the parties to discuss the form in which electronic information will be produced, how it will be preserved, and how to address claims that certain information is privileged.

The pre-scheduling conference meet and confer can be the single most important factor to reduce costs and burdens of discovery. In order for a local agency's counsel to be prepared to discuss these issues, the rules note that it is "important for counsel to become familiar with those systems before the conference." In some cases, counsel may have to identify and interview individuals with special knowledge of the agency's computer systems.

Rule 26(b) requires the parties to identify whether "reasonably accessible" electronic sources can provide all of the relevant, non-privileged, information. Parties will need to distinguish these "reasonably accessible" sources from those

[270] Fed. R. Civ. P. 37(e) Advisory Committee Note.

that are not "reasonably accessible" because of undue burden or cost. Examples of information that might not be reasonably accessible include:

- deleted items,
- fragmented or damaged data,
- information kept on some back-up tape systems for disaster recovery purposes, and
- legacy data remaining from systems no longer in use.

Under Rule 26(a), the parties must produce all of the relevant, non-privileged information from the "reasonably accessible" sources within 14 days of the initial conference during the "initial disclosure," a requirement unique to federal court where relevant information is disclosed at the outset of the civil discovery period. Discovery from sources that a party deems not "reasonably accessible" can still occur if the requesting party can show that there is no undue burden or cost or upon a showing of "good cause."

Once discovery begins in federal court a local agency must be prepared to explain how their electronic information systems work, which systems contain information potentially relevant to the litigation, how those systems are accessed, and the costs of accessing archival or older systems. Having a written policy in place will reduce the costs and staff time associated with complying with these discovery rules. It will also aid staff in familiarizing themselves with the operations of the agency's computer data and storage systems as well as any external storage and backup systems, and in explaining these operations to agency counsel and opposing parties. Finally, having a written policy will minimize the likelihood of destroying discoverable materials and thus dramatically reduce the chance that an agency will be hit with discovery sanctions during litigation.

Taken together, these federal discovery rules make it advisable for a local agency to put in writing its procedures for managing electronic information.

In light of these rules and obligations and as a first step to forming or maintaining an already-created written policy on electronically stored information, public agencies should review their operating systems to ensure they understand how electronic information is currently stored and retained. In addition, public agencies should examine their data recovery systems and archival data to determine the type of information contained in these systems, and to understand the costs associated with retrieving such data. Agencies should also regularly review their written policies once implemented to ensure that they remain up to date as new technologies and systems replace old ones.

(3) The California Civil Discovery Act Contains a Process for Electronic Discovery in State Court

In 2009, the California Legislature adopted federal-style procedural rules to permit the discovery of electronically stored information in state court cases pursuant to Assembly Bill ("AB") 5, following the 2006 amendments to the Federal Rules of Civil Procedure.[271] Electronically stored information is broadly defined by AB 5[272] as any information that is stored in an electronic medium, and includes emails, documents, spreadsheets and any other information stored in computers and other electronic devices.[273] These rules make the creation of the above-mentioned written policy on electronically stored information just as applicable to state court litigation as federal court litigation.

Similar to the Federal Rules, a safe harbor exists for spoliation caused by "routine, good faith operation of an electronic information system."[274] The state discovery rules specifically provide that a court shall not impose sanctions on a party for failing to provide electronically stored information that has been lost, damaged, altered or overwritten as the result of the routine, good faith operation of an electronic information system, absent exceptional circumstances.[275] Accordingly, public agencies should ensure electronically stored information is retained or deleted only in accordance with the adopted policy. Agencies should thus train employees to make sure the document retention policies are appropriately followed at all times.[276]

Further, as with federal court litigation, once state court litigation is reasonably anticipated, public agencies have a duty to stop automatic destruction processes and preserve potentially relevant electronically stored information in the format in which it currently exists, notwithstanding the normal document retention policy that might otherwise permit destruction.[277] In the event litigation is reasonably anticipated, public agencies should ensure that "litigation holds" are applied to electronically stored information potentially relevant to the litigation, so that it is not deleted, whether intentionally or by automatic computer processes. The retention of information that may be potentially relevant to

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[271] AB 5, Stat. 2009, c. 5 (amending Code of Civ. Proc. §§ 2016.020, 2031.010 through 2031.060, and 2031.210 through 2031.320, and adding Code of Civ. Proc. §§ 1985.8 and 2031.285).

[272] *See* Code of Civ. Proc. §§ 1985.8, 2016.020, and 2031.010 et seq.

[273] Code of Civ. Proc. § 2016.020(e).

[274] Code of Civ. Proc. § 2031.320(d).

[275] Code of Civ. Proc. § 2031.060(i)(1).

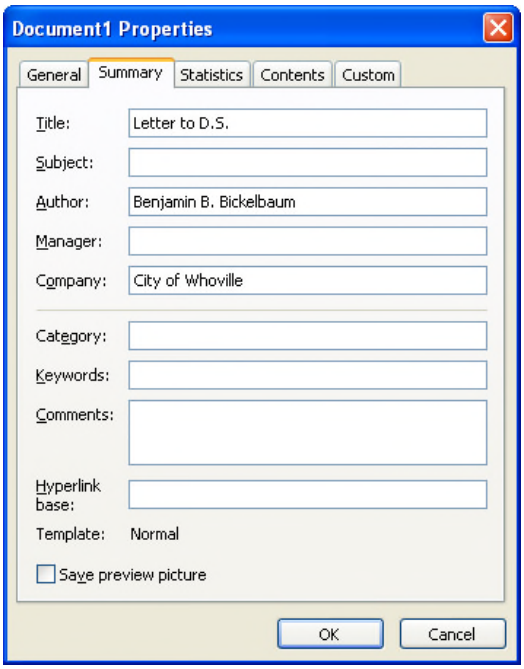
[276] Code of Civ. Proc. § 2031.060(i)(2).

[277] *Coca-Cola Bottling Co. v. Superior Court (Jones)*, 233 Cal. App. 3d 1273, 1293 n. 10 (4 Dist. 1991) (party litigant has a duty not to lose or destroy relevant evidence).

anticipated litigation should also be a part of the agency's written policy on electronically stored information.

In light of a 2017 California Supreme Court decision outlining the broad scope of discovery, agencies are advised to consult legal counsel in determining the breadth of a litigation hold. Documents and information that the agency believes to be protected under a right to privacy argument should still be preserved, if even potentially relevant to the litigation. In *Williams v. Superior Court*, the Court stated that "the right to discovery in this state is a broad one, to be construed liberally so that parties may ascertain the strength of their case and at trial the truth may be determined."[278] The Court determined that the defendant in *Williams* was obligated to disclose the personal information of individuals who may have had no bearing on or relation to the claims asserted by the plaintiff. It further stated that the party opposing discovery has the burden of showing that a privacy right exists that outweighs the potential relevance of the information requested. The same burden applies when the party opposing discovery argues undue hardship. In both instances, the burden is a high one. Agencies should therefore be mindful that they may have to produce a broader scope and larger volume of documents and electronically stored information than was required in prior years, and accordingly should, in consultation with counsel, broaden the scope of their document retention policy and litigation holds.

When instituting a legal hold, or responding to discovery requests in litigation, attorneys and clients must work together to understand how and where electronic documents, records (including social media posts), and emails are maintained and to determine how best to locate, review, and retain responsive documents.



B. Metadata

Word processing documents most readily fit the definition of "record," and they also present the greatest potential for inadvertent disclosures. A modern word processing document is comprised of far more than simple words on a page. Microsoft Word documents typically contain information about the author or editor, the author's organization, the time the document was created, modified or accessed, the amount of time spent editing the document, and even what earlier versions of the document looked like. This

[278] *Williams v. Superior Court (Marshalls of CA, LLC)*, 3 Cal. 5th 531, 538 (2017).

"metadata," which literally means data about data, is automatically attached to documents by modern word processors. For instance, some metadata appears in Microsoft Word under the "Home" menu, by selecting "Properties."

Although metadata can be useful information, it can also result in unwanted disclosures. For instance, as the dialog box above shows, Microsoft Word automatically inserts the name and company of the author of the document, and there are numerous other fields that can be filled in. If a local agency does not want this sort of information disclosed as a general rule, the word processor should be configured to not record this information.

More significantly, many word processors have a "tracked changes" function. When public officials and employees work with multiple drafts of a document, especially when multiple people work on the same document, they frequently make use of a feature that highlights every change made to the document. That way, when a party to a proposed contract wants to delete a provision or insert a line, it is easy for the other party to see the change. It is simple to turn this feature on and off, but it is also simple to turn the display of tracked changes on and off, while still having the word processor keep track of the changes. As a result, it is not uncommon for documents to be transmitted electronically with changes tracked, without the knowledge of the author. If the author deleted a paragraph, the person reviewing the tracked changes could restore that paragraph. The implications become particularly significant if the author had deleted the text because it was deemed inaccurate or sensitive.

Moreover, recall that drafts are only nondisclosable if it is the public agency's policy to not retain them in the course of business. If a city routinely saves documents with changes tracked, then arguably it has preserved the earlier drafts of the document. This could thwart a city's policy to avoid preserving drafts. Consequently, it should be common practice to remove any tracking from a document upon finalization, or better yet, to not use tracking in the first place.

Similarly, most word processors have an "undo" button, which is useful for correcting typos or to recover inadvertently deleted text. Many word processors can "undo" a string of actions, and can even "undo" actions repeatedly until the document is a blank page. If a city official sends that document to someone making a public records request, the individual could click on "undo" repeatedly to see every step that the author took in drafting the document. This presents the same problems as with "tracked changes" – sensitive or inaccurate information that the author meant to delete could be included in the metadata. Accordingly, in using word processors, public agencies should ensure that they are configured to eliminate the "undo" trail when a document is saved.

In addition to all of the above strategies, there are several programs available that can remove metadata after a document has been completed, or at the time it is emailed. However, the use of such programs on documents that are subject to a public records request would be of questionable legality. Under the Public Records Act, a request for a public document must include the exact document, and on the face of it, stripping metadata from a document that is requested in electronic form potentially would violate this requirement.[279] Depending on your document retention schedule, you may be able to strip metadata from some older documents upon archiving them, but deleting metadata from documents that the city is required to retain may violate document retention requirements.

If the requester does not expressly ask that the document be provided in electronic format, the statute does not prohibit the agency from supplying it in printed form. Accordingly, a local agency may wish to adopt a policy of providing electronic records in printed form unless a requester expressly asks for an electronic version, and providing records in .pdf format when requesters ask for electronic versions. If the requester expressly asks for the original document format, the City attorney should be consulted.

It is unclear how the new federal electronic document discovery rules would apply to metadata. Rule 26 does not specifically address metadata, but the comment to the revision mentions metadata and states that "[w]hether this information should be produced may be among the topics discussed in the Rule 26(f) conference." Consequently, there is the potential for the disclosure of metadata in litigation, which further highlights the importance of establishing standard practices for creating and handling metadata. During litigation, it is often advisable to maintain sources of electronically stored information in native formats with metadata, to preserve the ability to produce the data if necessary.

III. CITY WEBSITES

With the rapid integration of the internet into American culture, a significant percentage of California cities now provide at least basic information about their government on city-run websites. Posting certain commonly requested information on a web page is a way to reduce the staff time necessary to respond to public records requests. City websites also provide a method to increase public participation in local government, such as more recent requirements for posting of public meeting agendas electronically. However, city website practices may have legal ramifications, and it is advisable for a city to draft and implement a policy on the permitted uses of its website to avoid violating legal restrictions such

[279] *See* Gov't Code § 7922.530(a) ("Upon request, an *exact* copy shall be provided unless impracticable to do so."); *Rosenthal v. Hansen*, 34 Cal. App. 3d 754 (3 Dist. 1973).

as those related to mass mailings and use of public funds for "express advocacy," and also to avoid creating a "public forum."

A. Websites and the "Mass Mailing" Prohibitions

The Political Reform Act prohibits the sending of newsletters and other so-called "mass mailings" at public expense.[280] A "mass mailing" is defined as the mailing or distribution at public expense of 200 or more items within a calendar month featuring the name, office, photograph or other reference to an elected officer of the agency.[281] The underlying intent is to preclude elected officials from using newsletters as indirect campaign flyers for themselves.

In brief, Section 89002 of the Government Code provides a four-prong test to determine the legality of mass mailings. A mass mailing is prohibited if each of the following elements is present:

a. a delivery of a tangible item,

b. that "features" or includes reference to, an elected official,

c. distributed at public expense regardless of the cost, or produced at public expense where the cost of production exceeds $50.00, or

d. in a quantity of 200 or more per calendar month.[282]

On the face of it, the regulation would not apply to web pages, because they would not constitute "a delivery of a tangible item."

The FPPC, which interprets the Political Reform Act, has yet to render an official opinion on the applicability of the mass mailing rule to websites. However, numerous advice letters issued by the FPPC have concluded that the prohibitions on publicly funded mass mailings contained in Government Code Sections 89001 and 89002 do not apply to websites or web pages because they do not constitute a tangible item.

In 1998, the FPPC responded to an inquiry as to whether a committee, advocating the passage of a bond measure expected to be placed on the ballot by a school board, may obtain a link from a "school district website to a web page" advocating the passage of the bond measure. The FPPC advised that,

> According to [former] Regulation 18901(a)(1) [now Section 89002 of the Government Code], a publicly-funded mailing is a prohibited

[280] Gov't Code § 89001.

[281] Gov't Code § 89002(a).

[282] *Id*.

> mass mailing if it is delivered as a tangible item to the recipient at his or her residence, place of employment or business, or post office box. Consistent with [former] Regulation 18901, the ban is applicable to tangible items only. Since distribution over the Internet is not a distribution of a tangible item, Internet pages are not prohibited mass mailings under the [Political Reform] Act.[283]

Even though providing a link to an express advocacy website may not qualify as a "mass mailing," it could violate other laws, as will be discussed below in Section B.

A second advice letter similarly concluded that web pages are not covered under the mass mailing prohibitions of the Political Reform Act. That advice letter was issued by the FPPC in 1999 in response to a request for advice by the County of Lake. The inquiry was whether the County could include on its web page photographs and a short biography for each member serving on its board of supervisors.[284] The FPPC letter reiterated that former FPPC Regulation 18901 did not apply to the actions listed above because "web pages are not considered tangible items" and not subject to mass mailing restrictions.[285]

Since those advice letters were issued, the FPPC has continued to reaffirm its conclusion that distribution of information over the Internet, including websites, is not distribution of tangible items. In 2013, a city attorney requested advice regarding whether the mass mailing provisions prohibit City staff from listing the mayor's bed and breakfast business on the city's website along with other places of lodging in the city. The FPPC advised that the mass mailing provision does not prohibit the listing of the mayor's business on the city's website because providing information over the Internet is not distribution of a tangible item.[286] The FPPC also recommended a review of laws pertaining to use of public resources.[287] In 2019, the FPPC issued an informal advice letter concluding that the mass mailing prohibition does not apply to "tag" members of the Fountain Valley City Council on the City's Facebook page because the mass mailing provision does not apply to distribution over the Internet, this includes Facebook.[288]

Given the foregoing, city web pages provide a unique opportunity for elected officials to communicate with their constituents. Council members could each maintain their own page on the website, drawing attention to issues of interest to

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283 *Foote Advice Letter*, No. A-98-114, 1998 WL 289895 (1998) (citation omitted).

284 *Peterson Advice Letter,* No. A-99-013, 1999 WL 100857 (1999).

285 *Id*.

286 *Pierik Advice Letter*, No. A-13-012 (2013).

287 *Id*.

288 *Burns Informal Assistance*, No. I-19-145, 2019 WL 6458461 (2019). The FPPC cautioned, however, that Facebook "tagging" should also be analyzed to make sure that it did not result in a contribution under the Political Reform Act.

the community. There are, however, some limitations on what the web pages can contain, as discussed below.

B. Avoiding Express Advocacy

Although websites and web pages are not currently covered under the mass mailing restrictions of FPPC Regulation Section 18901, public agencies must still be mindful of other regulations and laws that might be violated by its decisions to permit links from official websites. For example, the Political Reform Act prohibits the use of public moneys for election campaigns.[289] Consequently, a city's web page must not indicate support or approval of, or advocate for, a candidate for elective office or a ballot measure.

The leading California case setting forth the basic rule with respect to government involvement in political campaigns is *Stanson v. Mott*.[290] In *Stanson*, the California Supreme Court addressed the question of whether the State Director of Beaches and Parks was authorized to expend public funds in support of certain state bond measures for the enhancement of state and local recreational facilities. The court concluded that the Director of Beaches and Parks lacked such authority and set forth the basic rule that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign."[291] Only impartial "informational" communications would be permissible, such as a fair presentation of the facts in response to a citizen's request for information.[292]

The *Stanson* Court also recognized that the line between improper "campaign" expenditures and proper "informational" activities is not always clear. "[T]he determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case."[293] The California legislature also codified the holding of *Stanson* in Government Code Section 54964.[294]

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289 Gov't Code § 85300. See also *Howard Jarvis Taxpayer Assn. v. Newsom*, 39 Cal. App. 5th 158, 161-162 (3 Dist. 2019) (invalidating limited exception to this prohibition).

290 *Stanson v. Mott*, 17 Cal. 3d 206 (1976).

291 *Id.* at 209-10.

292 *Id.* at 221.

293 *Id.* at 222 (citations omitted).

294 Government Code Section 54964 prohibits the expenditure of public funds "to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters." The statute does not prohibit expenditures to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency, if the informational activities are not otherwise prohibited by the Constitution or state law and the information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

The *Stanson* test was reaffirmed by the California Supreme Court in *Vargas v. City of Salinas*.[295] Prior to *Vargas*, courts attempting to interpret and apply *Stanson* used varying tests to determine the permissibility of expenditures. For example, in *California Common Cause v. Duffy*, an appellate court held that a local sheriff's use of public facilities and personnel to distribute postcards critical of then-Supreme Court Justice Rose Bird was "political" and not "informational" as permitted by *Stanson* because the cards presented only one side of Justice Bird's fitness to be retained in office.[296] In another appellate decision, *Schroeder v. City Council of Irvine*, Irvine's "Vote 2000" Program was upheld.[297] The program encouraged voter registration, without specifically advocating a particular position on any measure. Although the city had taken a public position in favor of the proposed ballot measure, the materials it distributed did not advocate any particular vote on the measure and rarely mentioned the measure at all. The *Schroeder* court held that the funds spent on the Vote 2000 program would be political expenditures and unlawful under *Stanson* only if the communications expressly advocated, or taken as a whole unambiguously urged, the passage or defeat of the measure.[298] Because the city presented a neutral position on "Measure F," at least in the campaign materials, the court upheld the program as valid.

However, in *Vargas v. City of Salinas*, the California Supreme Court decided that "express advocacy" is an insufficient standard. In *Vargas*, proponents of a local ballot initiative to repeal the city's utility users tax ("Measure O") sued the city alleging improper government expenditures. The court held that even if a communication does not expressly advocate for either side of an issue, a *Stanson* analysis must nonetheless be conducted to determine whether the activity was for informational or campaigning purposes based on its style, tenor, and timing.[299] Although the court did not specifically refer to the *Schroeder* analysis in its opinion, the court clearly stated that the "express advocacy" standard does not meaningfully address potential constitutional problems arising from the use of public funds for campaign activities that were identified in *Stanson*. Thus, local governments must look to *Vargas* rather than *Schroeder* for the proper standard to evaluate whether an expenditure is permissible.

A variety of factors led to the *Vargas* court's conclusion that the communications were informational, including the fact that the publications avoided argumentative or inflammatory rhetoric and did not urge citizens to vote in a particular manner. The challenged expenditures were made pursuant to general appropriations in the city's regular annual budget pertaining to the maintenance

295 *Vargas v. City of Salinas,* 46 Cal. 4th 1 (2009).

296 *California Common Cause v. Duffy*, 200 Cal. App. 3d 730, 746-747 (4 Dist. 1987).

297 *Schroeder v. City Council of Irvine*, 97 Cal. App. 4th 174, 187-188 (4 Dist. 2002).

298 *Id.*

299 *Vargas*, 46 Cal. 4th at 8.

of the city's website, the publication of the city's regular quarterly newsletter, and the ordinary provision of information to the public regarding the city's operations. The Supreme Court found that the city engaged in informational rather than campaign activity when it posted on the city's website the minutes of city council meetings relating to the council's action along with reports prepared by various municipal departments and presented by officials at city council meetings.[300] Similarly, the city did not engage in campaign activity by producing a one-page document listing the program reductions that the city council voted to implement should Measure O be approved, or in making copies of the document available to the public at the city clerk's office and public libraries.[301] The court reasoned that viewed from the perspective of an objective observer, the document clearly constituted an informational statement that merely advised the public of specific plans that the city council voted to implement should Measure O be approved.

Finally, the court found that the city engaged in permissible informational activity by mailing to city residents the fall 2002 "City Round-Up" newsletter containing articles describing proposed reductions in city services. Although under some circumstances the mailing of material relating to a ballot measure to a large number of voters shortly before an upcoming election would constitute campaign activity, a number of factors supported the court's conclusion that the mailing of the newsletter constituted informational rather than campaign activity: it was a regular edition of the newsletter that was mailed to all city residents as a general practice, the style and tenor of the publication was entirely consistent with an ordinary municipal newsletter and readily distinguishable from traditional campaign material, and the article provided residents with important information about the tax in an objective and nonpartisan manner.[302]

The Supreme Court illustrated the insufficiency of the "express advocacy" standard by suggesting that if the City of Salinas were to post billboards throughout the City prior to an election stating, "'IF MEASURE O IS APPROVED, SIX RECREATION CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE,' it would defy common sense to suggest that the City had not engaged in campaign activity even though such advertisements would not have violated the express advocacy standard."[303]

Vargas and *Stanson* reflect that local agencies must exercise caution when communicating to voters about local measures. The same prohibitions on the use

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[300] *Id.* at 37.

[301] *Id.* at 37-38 (stating, "not only [did] the document in question not advocate or recommend how the electorate should vote on the ballot measure, but its style and tenor [was] not at all comparable to traditional campaign material"). The fact that the City only made the document available at the City clerk's office and in public libraries to people who sought it out reinforced the document's informational nature.

[302] *Id.* at 38.

[303] *Id*. at 32.

of public moneys to support or oppose a ballot measure or a candidate for political office would likely also apply to public agency websites. This is because the time and expense of maintaining a website and adding links to other websites may result in a form of "in kind" contribution from the public agency to the particular candidate or campaign committee. "Professional services, including the creation and maintenance of a website for a candidate, could conceivably result in a contribution from the county to the candidate."[304]

Public officials must ensure that there is no inclusion of information or links on their websites that contain words of express advocacy or that unambiguously promote or suggest a particular position in a campaign. Public officials must also avoid any actions which, based on their "style, tenor and timing", may lead to a determination that a city website contains impermissible advocacy. Unfortunately, there is no hard and fast rule to assist public officials in distinguishing improper partisan campaign expenditures from permissible expenditures for "informational activities." Whether a communication is permissible will be based on a combination of these factors, and public officials should therefore seek the advice of the city attorney on a case-by-case basis. Assistance may also be obtained from the FPPC.

Note also that public officials could potentially face personal liability if a court concluded that they used public funds for a partisan campaign. The *Stanson* opinion concluded that public officials "may properly be held to a higher standard than simply the avoidance of 'fraud, corruption or actual malice' in their handling of public funds."[305] Instead, public officials must exercise "'due care,' i.e., reasonable diligence, in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of such due care."[306] If public officials published a web page that conveyed a partisan slant, a court could conclude that the officials failed to exercise this due care.

C. Public Forum

In addition to the mass mailing and express advocacy considerations, the existence of city websites also raises the issue of whether a website constitutes a "public forum" in which any member of the public would have a right to post information or links, or engage in debate or discourse. The decisions of public agencies on what sort of content to include on web pages, whether to allow external links to be posted, and what type of links to permit, have the potential to infringe upon rights guaranteed by the First Amendment of the United States

304 *Peterson Advice Letter,* No. A-99-013, 1999 WL 100857 (1999).

305 *Stanson*, 17 Cal. 3d at 226.

306 *Id.* at 226-27.

Constitution, the California Constitution's "Liberty of Speech Clause," and other legal principles.

In relevant part, the First Amendment provides that, "Congress shall make no law … abridging the freedom of speech."[307] Similarly, the "Liberty of Speech Clause" provides that, "A law may not restrain or abridge liberty of speech or press."[308]

The United States Supreme Court uses the "public forum" doctrine to evaluate the constitutionality of government regulation of private speech on public property. This doctrine classifies public property according to three categories of public forum status: (i) traditional public forums - areas traditionally used for expressive activity such as streets, sidewalks and parks; (ii) designated public forums - areas dedicated by the government for expressive activity, either generally or for limited purposes; and (iii) nonpublic forums.

"Public forum" status directly impacts the degree to which a public agency may regulate private expression on public property. For example, if a public agency's website were deemed a "nonpublic forum," then the agency would have considerable discretion in determining which applications for website links to accept. By contrast, if a public agency's website was deemed a "traditional public forum" or a "designated public forum," then the agency's discretion would be substantially diminished.

Two cases addressing whether city websites constitute public forums are discussed below.

(1) Putnam Pit, Inc. v. City of Cookeville

The case of *Putnam Pit, Inc. v. City of Cookeville* provides an example of how the First Amendment may limit a public agency's authority to control external links on its website. *Putnam Pit* is a federal case discussing the validity of a website link policy under the First Amendment.[309] This case involved a free speech claim by a small, free website newspaper publisher, against the City of Cookeville, Tennessee.

The case arose from Cookeville's refusal to establish a link from its website to the website of the publisher's on-line newspaper, the "*Putnam Pit*." The "*Putnam Pit*" website focused on commentary critical of the City of Cookeville and its officials and staff. At the time that the publisher initially requested and was denied the link, "several for-profit and non-profit entities were linked to the . . . [Cookeville]

[307] U.S. CONST. amend I.

[308] CAL. CONST. art. 1, § 2(a).

[309] *Putnam Pit, Inc. v. City of Cookeville*, 221 F.3d 834 (6th Cir. 2000).

Web site, including a local technical college, two Internet service providers, a law firm, a local computer club, a truck product manufacturer and distributor, and a site with information about Cookeville."[310] However, prior to the publisher's request, Cookeville "had no stated policy" on who could be linked to the city's website.[311] Upon learning of the publisher's request, the city manager decided to permit links only "from the Cookeville Website to other sites, which would promote the economic welfare, tourism, and industry of the city."[312] Pursuant to this policy, the city manager subsequently denied the publisher's request for a link from the Cookeville website to the "*Putnam Pit*" website and then removed several links to other websites from the Cookeville website.[313]

The Sixth Circuit Court of Appeals ruled that based on the facts presented, the city's website was a nonpublic forum under the First Amendment, and that the city could impose reasonable restrictions but could not engage in viewpoint discrimination.[314] The court also ruled the publisher was entitled to a trial regarding whether Cookeville discriminated against him based upon viewpoint when the city manager denied him a link on the website. Facts that could potentially constitute viewpoint discrimination included statements by the city manager that he thought the "*Putnam Pit*" consisted only of the publisher's "opinions," "which he didn't care for" and actions by the city manager who indicated to the publisher that he would not be permitted a link even if the "*Putnam Pit*" were a non-profit entity.[315]

(2) Vargas v. City of Salinas

In *Vargas v. City of Salinas*, the California Supreme Court also considered whether a city website constituted a public forum.[316] In *Vargas*, city residents placed an initiative on the ballot to repeal the city's long-standing utility users tax. The city staff prepared a series of reports addressing the impact the loss of the tax would have on the city's budget, including the reduction and elimination of services and programs, and posted those reports on the city's web page. The initiative supporters contended that they had a right to provide their own information on the web page, which the city rejected.

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310 *Id.* at 841.

311 *Id.*

312 *Id.*

313 *Id.*

314 *Id.* at 843-845.

315 The court further concluded that, "[t]he city's actions, some of which appear to be tied to the city's interests, and others which appear less clearly relevant to the purpose of the city's Web site, lead us to REVERSE the district court's grant of summary judgment because [the publisher] has raised a material issue of fact regarding whether the city discriminated against him and his Web site based upon viewpoint." *Putnam Pit, Inc.,* 221 F.3d at 846.

316 *Vargas*, 46 Cal. 4th at 37, n.18.

The Supreme Court concluded that the city's web page was not a public forum because the city had not opened its website to permit others to post material of their choice.[317]

D. Public Forum Analysis

The *Putnam Pit* and *Vargas* courts applied the public forum analysis of the First Amendment to the city's action with respect to the website, treating the website as analogous to physical public property. As previously mentioned, the United States Supreme Court has established that, for such analyses, the extent of permissible government restrictions on expressive activity are governed by whether the activity occurs in (i) a traditional public forum; (ii) a designated public forum; or (iii) a nonpublic forum.[318]

(1) Traditional public forum

Traditional public forums are "places which by long tradition or by government fiat have been devoted to assembly and debate." Typically such places have included public streets, sidewalks and parks.[319] Government regulations that restrict the "content" of expressive activity in such forums "must withstand strict scrutiny."[320] This means that if the government wishes to restrict expressive activity based on content, such restrictions must serve a "compelling state interest" and must be "narrowly tailored" to serve that interest. However, if the government imposes content-neutral restrictions on the "time, place and manner" of expressive activity in public forums, then such restrictions must serve a "significant public interest," must be "narrowly tailored" to that interest and must leave open "alternative avenues of communication."[321]

(2) Designated public forum

The Supreme Court has held that "[i]n a designated public forum, the government 'intentionally opens a nontraditional public forum for public discourse.'"[322] An example of a designated public forum is the public comment session at a city council meeting. In a designated public forum, the government may restrict the content of the expressive activity to that which is within the scope of the public

317 *Id.*

318 *Perry Ed. Ass'n v. Perry Local Ed. Ass'n,* 460 U.S. 37, 45-46 (1983).

319 *Putnam Pit, Inc.,* 221 F.3d at 842 (citing *Perry*, 460 U.S. at 45).

320 *Id.* at 843.

321 *Id.* (citing *Perry*, 460 U.S. at 45).

322 *Id*. (citing *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc*., 473 U.S. 788, 802 (1985)).

forum. For example, in the case of a city council meeting, the government may restrict speech to only permit discussion of city business.[323]

Once the government opens a nontraditional public forum to a class of persons, the restrictions applicable to those to whom the forum is opened must also withstand strict scrutiny. Thus, as in the case of public forums, regulations governing designated speakers in designated public forums must serve a "compelling state interest" and must be "narrowly tailored" to serve that interest.[324] Accordingly, it is important for a city to avoid creating a designated public forum on its website so as not to establish rights where none previously existed, or at least to have a clear policy on who may post on the city's website.

(3) Nonpublic forum

Nonpublic forums are those places that are not typically used for public debate or the free exchange of ideas. Accordingly, "the First Amendment does not forbid a viewpoint-neutral exclusion of speakers who would disrupt a nonpublic forum and hinder its effectiveness for its intended purpose."[325]

Examples of nonpublic forums include highway rest areas and advertising on a municipal bus.[326] In a nonpublic forum government may prohibit speech or expressive activity, so long as such restrictions are reasonable in light of the government's interest and do not attempt to suppress the speaker's activity based on disagreement with the speaker's views.[327]

(4) Public entity websites as nonpublic forums

The Sixth Circuit Court of Appeals in *Putnam Pit* concluded that the City of Cookeville's website was a "nonpublic" forum under the First Amendment because the website was not open to the public, and before and after the city adopted a website link policy, links had been established on an individualized basis.[328] This determination is significant because a government entity, as previously discussed, has more discretion to regulate public expression in a nonpublic forum than it does in a "traditional public forum" (such as a park) or in a "designated public forum" (a place expressly opened for free speech by the public). The court also emphasized that the city had legitimate interests "in

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323 *See White v. City of Norwalk*, 900 F. 2d 1421, 1425 (9th Cir. 1990) (concluding that city councils have authority to limit speech through the imposition of agendas and rules of order and decorum).

324 *Perry*, 460 U.S. at 46.

325 *Putnam Pit,* 221 F. 3d at 845 (quoting *Cornelius,* 473 U.S. at 811).

326 *Jacobson v. Bonine*, 123 F. 3d 1272, 1274 (9th Cir. 1997); *Children of the Rosary v. City of Phoenix*, 154 F. 3d 972, 978 (9th Cir. 1998).

327 *Perry,* 460 U.S. at 46.

328 *Putnam Pit, Inc.,* 221 F.3d at 844.

keeping links that are consistent with the purpose of the site—providing information about city services, attractions and officials."[329]

Despite the fact that the court in *Putnam Pit* determined that the city's website was a nonpublic forum, giving the city broad discretion to limit access to its website links, the court stated that the city could not deny links "solely based on the controversial views" the publisher espouses.[330] The court concluded that the city's "requirement that websites eligible to be linked to the city's site promote the city's tourism, industry and economic welfare gives broad discretion to city officials, raising the possibility of discriminatory application of the policy based on viewpoint."[331] Accordingly, the court remanded the case to the district court for further proceedings on the issue of whether the city improperly exercised its authority to restrict access to links on its website in a discriminatory manner in violation of the publisher's First Amendment rights.

The *Vargas* court also concluded that the city's website was a nonpublic forum, and the city could exclude the initiative proponents from posting information on the site.[332] In contrast to *Putnam Pit*, in *Vargas* the city did not permit access to the web page by either proponents or opponents of the ballot initiative.[333]

Limiting use of a city website only to city-related activities may result in a court finding that the public forum analysis is not appropriate under the facts, and that the issue should be evaluated instead under the doctrine of governmental speech.[334] The U.S. Supreme Court has ruled that the Free Speech clause does not apply to government speech, because the Free Speech Clause restricts government regulation of private speech and does not regulate government speech.[335] Under the government speech doctrine, the government has the right to speak for itself and a government entity may exercise this same freedom to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message.[336]

In *Sutliffe v. Epping School District*, an advocacy group challenged the Town of Epping after the town refused to include the group's hyperlink on the town's website.[337] The group wanted to present opinions countering the town's budget proposals regarding town and school activities. The group contended its hyperlink should have been allowed because the town had included a hyperlink

329 *Id.* at 845.

330 *Id.*

331 *Id.* at 845-46 (citations omitted).

332 *Vargas*, 46 Cal. 4th at 37 n.18.

333 *See Id.*

334 *Pleasant Grove City v. Summum,* 555 U.S. 460, 467 (2009).

335 *Id.*

336 *Id*. at 468.

337 *Sutliffe v. Epping School District*, 584 F.3d 314, 333 (1st Cir. 2009).

to a one-day event put on by "SUE", which was part of a state university-sponsored program and was to be held among town residents to foster community spirit, civic discourse, and the organization of community-defined projects and action groups. By unwritten practice, the town had previously allowed only hyperlinks that would promote providing information about the town, and did not permit links that were political or advocated for certain candidates. A written policy established after the group's request limited hyperlinks to those for governmental agencies or events and programs coordinated or sponsored by the town.

The federal appeals court ruled in *Sutliffe* that a government entity has the right to express itself on means of communication that the government owned. The town engaged in government speech because the town created the website and selected which hyperlinks to place on its website to convey information about the town to its citizens and the outside world and, by choosing only certain hyperlinks to place on that website, communicated an important message about itself.[338] Hyperlinks were added only with approval by the Board of Selectmen. The court also rejected the group's claim that the town engaged in viewpoint discrimination, because the SUE event was a town-sponsored and financially-supported event, and nonpartisan.[339] The court also concluded that a public forum analysis did not apply under the facts, because the town's website is not a traditional public forum, and the website was not a designated public forum because there was no evidence that the town intentionally opened a nontraditional public forum for public discourse.[340]

Accordingly, in drafting and administering website link policies, a public agency should be mindful that "nonpublic forum status does not mean that the government can restrict speech in whatever way it likes."[341] A public agency may not deny requests to post information and links simply because they do not agree with a requesting party's views or the views espoused on the requesting party's website, but an across-the-board policy that does not discriminate on the basis of viewpoint should withstand judicial scrutiny. Reserving the website only for the public agency's activities and purposes may also help the public agency demonstrate that it is engaging in government speech, and has not created a public forum.

E. Chat Rooms, Forums, and Social Media

Note that the conclusion would have likely been different in *Vargas* if the website had contained a chat room, or other technology promoting open public

[338] *Id*. at 331.

[339] *Id*. at 331-332.

[340] *Id*. at 333-334.

[341] *Putnam Pit Inc.*, 221 F.3d at 846 (citations omitted).

discussion. The term "chat room" generally refers to an area of a website that allows for a real-time interactive discussion between whoever wishes to participate, with every participant seeing what every other participant types in. Chat rooms allow visitors to access web pages to state their views on a topic of discussion, and in unmoderated chat rooms, to say anything about any subject. Many popular social media services, including Facebook, Twitter, and Instagram, include a system of public comment threads that similarly promote public discussion.

In *Vargas*, the California Supreme Court did not address chat rooms or social media services. However, in the prior appellate court decision, which was superseded on other grounds by the California Supreme Court, the appellate court had little trouble concluding that a chat room on a city web page would constitute a public forum:

> As noted above, "electronic communication media may constitute public forums. Websites that are accessible free of charge to any member of the public where members of the public may read the views and information posted, and post their own opinions, meet the definition of a public forum . . . ."[342]

Ampex Corp. v. Cargle and *ComputerXpress, Inc. v. Jackson*, were "anti-SLAPP" motions brought by defendants in defamation and libel actions, which are motions to strike a "Strategic Lawsuit Against Public Participation." In order to have a viable anti-SLAPP motion, the statements at issue must be made in a public forum, and both opinions concluded that chat rooms on the websites were public forums.

The federal courts increasingly hold that chat rooms and other forms of social media may constitute public forums. In 2017, the U.S. Supreme Court described cyberspace, and social media, as follows: "While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general [citation omitted], and social media in particular."[343]

In a 2022 decision, *Garnier v. O'Connor-Ratcliff*, the Ninth Circuit Court of Appeals ruled that Facebook and Twitter pages set up by two members of a local school

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[342] *Vargas v. City of Salinas*, 37 Cal. Rptr. 3d 506, 527 (2005) (citing *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1576 (1 Dist. 2005); *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1006-07 (4 Dist. 2001)).

[343] See *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735–36 (2017) (Supreme Court ruled that a North Carolina statute prohibiting sex offenders from accessing social networking websites violated the First Amendment because even assuming that the statute was content neutral, the statute could not survive intermediate scrutiny because it was not narrowly tailored to serve a significant governmental interest).

board violated two parents' First Amendment rights by deleting their comments and then eventually blocking the parents from their social media pages entirely.[344]

As reflected in the circuit court's recitation of the facts, the two trustees created public Facebook and Twitter pages to promote their re-election campaigns.[345] The trustees were eventually elected to the school board, but continued to use their social media pages to publicize information about the school board and its board of trustees. The plaintiff parents frequently posted comments critical of the board of trustees, including 226 identical replies within a 10-minute period, which the trustees repeatedly deleted or hid. The trustees eventually blocked the parents entirely from their social media pages.

The Ninth Circuit concluded that the trustees' social media pages were designated public fora because initially they were "open and available to the public without any restriction on the form or content of comments."[346] Further, the trustees would solicit feedback from their constituents and responded to posts left in their comment sections.[347] The trustees violated the parents' First Amendment rights by blocking only them from the social media pages when the parents' critical posts had not actually disrupted the comment sections.[348] Reasonable rules of etiquette addressing repetitive or lengthy posts could have addressed the trustees' purported concerns.[349]

A similar conclusion would likely result when evaluating a "forum" or "message board" on a city web page, which are similar to chat rooms but do not occur in real-time; instead, people post messages one at a time that are typically grouped by topic and preserved on the web page in chronological order, for anyone to read. As their names suggests, a "forum" or "message board" on a city web page would potentially constitute a "public forum."

F. Accessibility Requirements

One other concern in designing a local agency's website is whether it is accessible to individuals with disabilities. Under the Americans with Disabilities Act (the "ADA"), local governments must ensure that they provide qualified

344 *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158 (9th Cir. 2022). See also *Knight First Amendment Institute v. Trump*, 928 F. 3d 226, 237-238 (2nd. Cir. 2019), cert. granted, judgment vacated by *Biden v. Knight First Amendment Institute At Columbia University*, 141 S.Ct. 1220, (Apr. 05, 2021); dismissed as moot, 2021 WL 5548367 (2nd Cir., May 26, 2021). In the vacated opinion, the Second Circuit previously held that President Trump unconstitutionally excluded individuals from a public forum by blocking individual users who criticized him or his policies from his Twitter account, thus preventing them from "viewing, retweeting, replying to, and liking his tweets".

345 *Id.* at 1163.

346 *Id.* at 1178.

347 *Id.*

348 *Id.* at 1181.

349 *Id.* at 1182.

individuals with disabilities equal access to their programs and services, including by making reasonable modifications to rules, policies, or practices; removing architectural, communication, or transportation barriers; or providing auxiliary aids or services, unless doing so would fundamentally alter the nature of their programs or services or would impose an undue burden.[350] Local governments must take appropriate steps to ensure that their communications with applicants, participants, members of the public, and companions are as effective as communications with others, and furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of a government service, program or activity.[351]

Based on these requirements, the U.S. Department of Justice takes the position that state and local government websites must be designed to be accessible to individuals with disabilities. In March 2022, the U.S. Department of Justice issued guidance describing how state and local governments and businesses open to the public can make sure that their websites are accessible to people with disabilities as required by the ADA.[352] The DOJ will pursue enforcement actions, settlements and consent decrees to ensure that governmental websites are accessible.[353] In designing and maintaining an agency's web page to ensure compliance with First Amendment and Brown Act requirements, an agency should make sure it is designed for accessibility as well, in order to minimize the potential for litigation and adverse decisions.

There are currently no federal regulations addressing website accessibility requirements for state and local governments. In July 2022, the U.S. Department of Justice announced its intention to initiate the rule-making process in April 2023, with a comment period ending June 2023.[354] Pending adoption of federal standards, many state and local governments have used draft regulations issued during a prior Department of Justice rule-making process that started in 2010, but

350 42 U.S.C. § 12131 et seq.

351 28 C.F.R. 35.160(a) and (b)(1).

352 See U.S. Department of Justice Guidance on Guidance on Web Accessibility and the ADA (issued March 18, 2022), DOJ 22-262 (D.O.J.), 2022 WL 820126; also available at https://www.ada.gov/resources/web-guidance/.

353 *See* U.S. Dep't of Justice, Accessibility of State and Local Government Websites to People with Disabilities (available at http://www.ada.gov/websites2.htm or https://www.ada.gov/websites2_prnt.pdf; U.S. Dep't of Justice, ADA Best Practices Tool Kit for State and Local Governments, Chapter 5, "Website Accessibility Under Title II of the ADA" (available at https://www.ada.gov/pcatoolkit/chap5toolkit.htm or https://www.ada.gov/pcatoolkit/ch3_toolkit.pdf). *See Barden v. City of Sacramento*, 292 F. 3d 1073, 1076-1077 (9th Cir. 2002) (holding that the ADA must be construed broadly to apply to normal functions of a municipal entity in order to effectively implement the ADA's fundamental purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities).

354 The notice is available in the Department of Justice's Unified Agenda at: https://www.reginfo.gov/public/do/eAgendaViewRule?RIN=1190-AA79&pubId=202204&utm_medium=email&utm_source=govdelivery.

was ended in 2017.[355] Those draft standards are often used by state and local governments as a guide for best practices in considering accessibility issues. In addition, even without specific technical standards applicable to local governments, there are a number of regulations and guidelines that may be used to design accessible public websites. Other federal laws may impose accessibility requirements on local government websites, depending on the circumstances. For example, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability by federal agencies and recipients of federal assistance, and consequently recipients of federal funds may need to meet federal accessibility requirements.[356] Section 508 of the Workforce Rehabilitation Act of 1973, as amended, also requires programs and activities funded by federal agencies to be accessible to people with disabilities, including federal employees and members of the public, and covers ICT developed, procured, maintained, or used by federal agencies.[357] The Telecommunications Act of 1996 requires in part that telecommunications products and services be accessible to people with disabilities.[358] Potential sources of website design standards include:

- The Federal Information and Communications Technology (ICT) Final Standards and Guidelines, set forth at 36 C.F.R. parts 1193 and 1194;[359] and

- The World Wide Web Consortium (W3C) Web Content Accessibility Guidelines.[360]

While these sources do not expressly apply to city websites, they provide various methods of ensuring that a web page is accessible, including providing text equivalents for graphics, ensuring that information conveyed with color is also available without color, and using high contrast color choices. Many state and

[355] See 75 Fed. Reg. 43460 (July 26, 2010), 2010 WL 2888003(F.R.); 81 Fed. Reg. 28658 (May 9, 2016), 2016 WL 2609932(F.R.); and 82 Fed. Reg. 60932 (December 26, 2017), 2017 WL 6555806(F.R.).

[356] 29 U.S.C. § 794.

[357] 29 U.S.C. § 794d; see 36 C.F.R. Part 1194; Appendix A to Part 1194—Section 508 of the Rehabilitation Act: Application and Scoping Requirements; Appendix C to Part 1194—Functional Performance Criteria and Technical Requirements; and Appendix D to Part 1194—Electronic and Information Technology Accessibility Standards as Originally Published on December 21, 2000.

[358] 47 U.S.C. §§ 153 and 255.

[359] 82 Fed. Reg. 5790-01 (1/18/17), 2017 WL 168818, as amended 83 Fed. Reg. 2912 (1/22/18), 2018 WL 488398. These federal regulations were enacted pursuant to Section 508 of the Workforce Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and the Telecommunications Act of 1996 (47 U.S.C. §§ 153 and 255).

[360] Available at http://www.w3.org/. The revised Section 508 standards contained in the federal regulations are based on WCAG 2.0 developed by the World Wide Web Consortium (W3C).

local agencies have incorporated the federal requirements into the design of their information technology systems, including their websites.[361]

Providing accommodations for persons with disabilities to use public websites is not particularly onerous; in fact, the Department of Justice has stated that "implementing accessibility features is not difficult and will seldom change the layout or appearance of web pages."[362]

IV. CONCLUSIONS

The law related to electronic documents continues to evolve as computer technology advances and public officials respond and adapt to those advances. The advent of email, text messages, and other forms of social media has expanded the opportunities for collaboration greatly, but has simultaneously expanded the potential for inadvertent Brown Act violations, as well as unwanted disclosure of preliminary or sensitive information when emails and text messages must be disclosed in response to a Public Records Act request. When using email, public officials should refrain from using "reply all" to avoid serial meetings, and should be aware of the disclosure requirements of the Brown Act for documents related to items discussed at a public meeting. Public officials should also be sensitive to the risk that the Public Records Act may require disclosure of emails or text messages in which they discuss public business, and not treat them as casual conversation. While the deliberative process privilege may apply to protect some such emails or text messages, the doctrine has been applied sparingly by California courts. A clear policy regarding the deletion of emails and text messages will also help to reduce unwanted exposure, although an agency must be able to suspend its usual deletion procedures to preserve electronic records potentially relevant to state or federal litigation.

Although federal and state laws continue to develop, electronic documents and information other than emails (for example, posts on social media websites, such as Facebook[363] or Twitter,[364] that are deemed to be a public forum or otherwise relate to an agency's public business) may be subject to disclosure under the California Public Records Act, California discovery rules, and Federal Rules of Civil

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361 In California, state websites must meet both the web accessibility standards in California Government Code §§ 7405 and 11135, which adopted the Section 508 standards and the Priority 1 and 2 level checkpoints of the Web Content Accessibility Guidelines 2.0 (WCAG 2.0 "AA" Conformance Level) developed by the World Wide Web Consortium (W3C).

362 U.S. Dep't of Justice, Accessibility of State and Local Government Websites to People with Disabilities, http://www.ada.gov/websites2.htm.

363 See discussion in Part III(G), above, regarding *Davison v. Randall*, 912 F. 3d 666 (county official's Facebook page deemed a public form). See also *German v. Eudaly*, 2018 WL 3212020 (D. Ore. 2018) [on facts presented, judge ruled that a city commissioner did not violate a public activist's right to petition the government when the commissioner blocked the activist from seeing the commissioner's nonofficial Facebook page and denied a public records request to see the Facebook page, but granted the activist leave to amend her complaint to show that the commissioner acted in her official capacity when using her nonofficial Facebook page].

364 See discussion in Part III(E), fn. 350, above, regarding *One Wisconsin Now v. Kremer*, 354 F. Supp. 3d 940 (interactive portions of state legislators' Twitter accounts constituted a designated public forum under the First Amendment).

Procedure 26(a). An agency must make electronic records available in an electronic format if requested in response to a Public Records Act request. An agency may also have to disclose electronic records in litigation and even metadata may be discoverable. Thus, it is important to avoid the automatic creation of metadata, to the extent possible. Public officials should also consult with their information technology departments to ensure that metadata is not inadvertently inserted into electronic records when they are created.

With respect to websites, caution must be taken to ensure a public agency's website does not indicate support or approval of, or promote or advocate for, a candidate for elective office. Likewise, a public agency website cannot be used to advocate for or against an initiative election. In addition to avoiding express advocacy that unambiguously suggests a particular position in a campaign, public officials must also avoid any actions which, based on their "style, tenor and timing," may lead to a determination that a public agency website contains impermissible advocacy.

The content of a website link policy, and the manner in which such a policy is implemented, are critical in a public agency's ability to regulate the information and links that will be permitted on its website. It is important that a public agency does not arbitrarily discriminate in denying requests for website links. The establishment and adherence to a specific written policy regarding website links would likely assist a public agency in avoiding the litigation challenges faced by the City of Cookeville in the *Putnam Pit* case, and should assist generally in avoiding violations of the First Amendment. A uniform policy, such as that upheld in the *Vargas* opinion, may serve as a viable defense to such challenges.

We have several recommendations for drafting website policies. First, the website link policy should contain a "statement of purpose" indicating that neither the public agency's website nor its links list are "forums" for expressive activity by the public. The following is our suggested language for that portion of the policy, for the hypothetical City of Anytown:

> "This policy governs the establishment of external links on the City of Anytown's official website. For purposes of this policy, an 'external link' is a hyperlink from the City of Anytown's website to a website maintained by another party. Neither the City of Anytown's website nor the external links listed on such website constitute a forum for expressive activity by members of the public. Rather, the purpose of the City of Anytown's website and the external links list is to provide information about officials, services, and attractions related to City of Anytown. This policy is declaratory of the City of Anytown's existing

> administrative practice regarding the establishment of external links on its website."

Second, the website link policy should specifically designate the types of organizations that are eligible to have a link established to their website. We think eligibility may be limited to nonprofit entities (as Cookeville chose to do), but it does not have to be so restricted. We also recommend that the website specifically exclude links to sites that have as their purpose the election or defeat of specific candidates or the passage or defeat of specific ballot measures, regardless of political position. In our opinion, implementation of these suggestions will strengthen a public agency's position if it ever becomes necessary to defend a decision to deny a request for a link from a public agency's website.

Finally, the agency should ensure that its web page complies with the accessibility requirements of the ADA, such as providing text equivalents for graphics, ensuring that information conveyed with color is also available without color, and using high contrast color choices.

PART THREE.

THE CALIFORNIA PUBLIC RECORDS ACT

The California Public Records Act

DIVISION 10. ACCESS TO PUBLIC RECORDS

PART 1. GENERAL PROVISIONS

CHAPTER 1. Preliminary Provisions

Article 1. Short Titles

7920.000. This division shall be known and may be cited as the California Public Records Act.

7920.005. This division recodifies the provisions of former Chapter 3.5 (commencing with Section 6250) of Division 7 of this title. The act that added this division, and the act that consists of conforming revisions to reflect the addition of this division, shall be known and may be cited as the "CPRA Recodification Act of 2021."

Article 2. Effect of Recodification

7920.100. Nothing in the CPRA Recodification Act of 2021 is intended to substantively change the law relating to inspection of public records. The act is intended to be entirely nonsubstantive in effect. Every provision of this division and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.

7920.105. (a) A provision of this division, or any other provision of the CPRA Recodification Act of 2021, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.

(b) A reference in a statute to a previously existing provision that is restated and continued in this division, or in any other provision of the CPRA Recodification Act of 2021, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.

(c) A reference in a statute to a provision of this division, or any other provision of the CPRA Recodification Act of 2021, which is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.

7920.110. (a) A judicial decision interpreting a previously existing provision is relevant in interpreting any provision of this division, or any other provision of the

CPRA Recodification Act of 2021, which restates and continues that previously existing provision.

(b) However, in enacting the CPRA Recodification Act of 2021, the Legislature has not evaluated the correctness of any judicial decision interpreting a provision affected by the act.

(c) The CPRA Recodification Act of 2021 is not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by the act.

7920.115. (a) An opinion of the Attorney General interpreting a previously existing provision is relevant in interpreting any provision of this division, or any other provision of the CPRA Recodification Act of 2021, which restates and continues that previously existing provision.

(b) However, in enacting the CPRA Recodification Act of 2021, the Legislature has not evaluated the correctness of any Attorney General opinion interpreting a provision affected by the act.

(c) The CPRA Recodification Act of 2021 is not intended to, and does not, reflect any assessment of any Attorney General opinion interpreting any provision affected by the act.

7920.120. (a) A judicial decision or Attorney General opinion on the constitutionality of a previously existing provision is relevant in determining the constitutionality of any provision of this division, or any other provision of the CPRA Recodification Act of 2021, which restates and continues that previously existing provision.

(b) However, in enacting the CPRA Recodification Act of 2021, the Legislature has not evaluated the constitutionality of any provision affected by the act, or the correctness of any judicial decision or Attorney General opinion on the constitutionality of any provision affected by the act.

(c) The CPRA Recodification Act of 2021 is not intended to, and does not, reflect any determination of the constitutionality of any provision affected by the act.

Article 3. Effect of Division

7920.200. The provisions of this division shall not be deemed in any manner to affect the status of judicial records as it existed immediately before the effective date of the provision that is continued in this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of

discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

CHAPTER 2. Definitions

7920.500. For purposes of Article 3 (commencing with Section 7928.200) of Chapter 14 of Part 5, "elected or appointed official" includes, but is not limited to, all of the following:

(a) A state constitutional officer.

(b) A Member of the Legislature.

(c) A judge or court commissioner.

(d) A district attorney.

(e) A public defender.

(f) A member of a city council.

(g) A member of a board of supervisors.

(h) An appointee of the Governor.

(i) An appointee of the Legislature.

(j) A mayor.

(k) A city attorney.

(l) A police chief or sheriff.

(m) A public safety official.

(n) A state administrative law judge.

(o) A federal judge or federal defender.

(p) A member of the United States Congress or appointee of the President of the United States.

7920.505. (a) The following provisions are continuations of provisions that were included in former Section 6254 as that section read when it was repealed by the CPRA Recodification Act of 2021:

(1) Section 7921.500.

(2) Sections 7923.600 to 7923.625, inclusive.

(3) Section 7923.700.

(4) Sections 7923.800 and 7923.805.

(5) Section 7924.505.

(6) Section 7925.000.

(7) Section 7925.005.

(8) Section 7925.010.

(9) Section 7926.000.

(10) Section 7926.100.

(11) Section 7926.200.

(12) Section 7926.210.

(13) Section 7926.220, except the continuation of former Section 6254.14(b).

(14) Section 7926.225, except the continuation of former Section 6254.14(b).

(15) Section 7926.230, except the continuation of former Section 6254.14(b).

(16) Section 7926.235.

(17) Section 7927.000.

(18) Section 7927.100.

(19) Section 7927.200.

(20) Section 7927.300.

(21) Section 7927.500.

(22) Section 7927.700.

(23) Section 7927.705.

(24) Section 7928.000.

(25) Section 7928.100.

(26) Sections 7928.405 and 7928.410.

(27) Section 7928.705.

(28) Section 7929.000.

(29) Section 7929.200.

(30) Section 7929.205.

(31) Chapter 18 (commencing with Section 7929.400) of Part 5.

(32) Section 7929.605.

(b) The provisions listed in subdivision (a) may be referred to as "former Section 6254 provisions."

(c) Subdivision (a) does not include any provision that was first codified in one of the specified numerical ranges after the effective date of the CPRA Recodification Act of 2021.

7920.510. As used in this division, "local agency" includes any of the following:

(a) A county.

(b) A city, whether general law or chartered.

(c) A city and county.

(d) A school district.

(e) A municipal corporation.

(f) A district.

(g) A political subdivision.

(h) Any board, commission, or agency of the foregoing.

(i) Another local public agency.

(j) An entity that is a legislative body of a local agency pursuant to subdivision (c) or (d) of Section 54952.

7920.515. As used in this division, "member of the public" means any person other than a member, agent, officer, or employee of a federal, state, or local agency

who is acting within the scope of that membership, agency, office, or employment.

7920.520. As used in this division, "person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

7920.525. (a) As used in this division, "public agency" means any state or local agency.

(b) As used in Article 5 (commencing with Section 7926.400) of Chapter 5 of Part 5, "public agency" means an entity specified in subdivision (c) of Section 7926.400.

7920.530. (a) As used in this division, "public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(b) "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

7920.535. As used in this division, "public safety official" means the following parties, whether active or retired:

(a) A peace officer as defined in Sections 830 to 830.65, inclusive, of the Penal Code, or a person who is not a peace officer, but may exercise the powers of arrest during the course and within the scope of the person's employment pursuant to Section 830.7 of the Penal Code.

(b) A public officer or other person listed in Section 1808.2 or 1808.6 of the Vehicle Code.

(c) An "elected or appointed official" as defined in Section 7920.500.

(d) An attorney employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender, the United States Attorney, or the Federal Public Defender.

(e) A city attorney and an attorney who represents cities in criminal matters.

(f) An employee of the Department of Corrections and Rehabilitation who supervises inmates or is required to have care or custody of a prisoner.

(g) A sworn or nonsworn employee who supervises inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, or a local detention facility, or a local juvenile hall, camp,

ranch, or home, and a probation officer as defined in Section 830.5 of the Penal Code.

(h) A federal prosecutor, a federal criminal investigator, and a National Park Service Ranger working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

(j) State and federal judges and court commissioners.

(k) An employee of the Attorney General, a district attorney, or a public defender who submits verification from the Attorney General, district attorney, or public defender that the employee represents the Attorney General, district attorney, or public defender in matters that routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts.

(l) A nonsworn employee of the Department of Justice or a police department or sheriff's office that, in the course of employment, is responsible for collecting, documenting, and preserving physical evidence at crime scenes, testifying in court as an expert witness, and other technical duties, and a nonsworn employee that, in the course of employment, performs a variety of standardized and advanced laboratory procedures in the examination of physical crime evidence, determines their results, and provides expert testimony in court.

7920.540. (a) As used in this division, "state agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) Notwithstanding subdivision (a) or any other law, "state agency" also means the State Bar of California, as described in Section 6001 of the Business and Professions Code.

7920.545. As used in this division, "writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

PART 2. DISCLOSURE AND EXEMPTIONS GENERALLY

CHAPTER 1. Right of Access to Public Records

7921.000. In enacting this division, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

7921.005. A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this division.

7921.010. (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this division to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this division.

(b) Nothing in this section requires a state or local agency to use the State Printer to print public records.

(c) Nothing in this section prevents the destruction of a public record pursuant to law.

(d) This section shall not apply to contracts entered into before January 1, 1996, between the County of Santa Clara and a private entity, for the provision of public records subject to disclosure under this division.

CHAPTER 2. General Rules Governing Disclosure

Article 1. Nondiscrimination

7921.300. This division does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

7921.305. (a) Notwithstanding the definition of "member of the public" in Section 7920.515, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

(b) This section does not constitute a change in, but is declaratory of, existing law.

7921.310. Notwithstanding Section 7921.305 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a

writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

Article 2. Voluntary Disclosure

7921.500. Unless disclosure is otherwise prohibited by law, the provisions listed in Section 7920.505 do not prevent any agency from opening its records concerning the administration of the agency to public inspection.

7921.505. (a) As used in this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of that membership, agency, office, or employment.

(b) Notwithstanding any other law, if a state or local agency discloses to a member of the public a public record that is otherwise exempt from this division, this disclosure constitutes a waiver of the exemptions specified in:

(1) The provisions listed in Section 7920.505.

(2) Sections 7924.510 and 7924.700.

(3) Other similar provisions of law.

(c) This section, however, does not apply to any of the following disclosures:

(1) A disclosure made pursuant to the Information Practices Act (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) or a discovery proceeding.

(2) A disclosure made through other legal proceedings or as otherwise required by law.

(3) A disclosure within the scope of disclosure of a statute that limits disclosure of specified writings to certain purposes.

(4) A disclosure not required by law, and prohibited by formal action of an elected legislative body of the local agency that retains the writing.

(5) A disclosure made to a governmental agency that agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.

(6) A disclosure of records relating to a financial institution or an affiliate thereof, if the disclosure is made to the financial institution or affiliate by a state agency responsible for regulation or supervision of the financial institution or affiliate.

(7) A disclosure of records relating to a person who is subject to the jurisdiction of the Department of Business Oversight, if the disclosure is made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Business Oversight.

(8) A disclosure made by the Commissioner of Business Oversight under Section 450, 452, 8009, or 18396 of the Financial Code.

(9) A disclosure of records relating to a person who is subject to the jurisdiction of the Department of Managed Health Care, if the disclosure is made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

Article 3. Disclosure to District Attorney and Related Matters

7921.700. A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this division when requested by a district attorney.

7921.705. (a) If a district attorney makes a request to a state or local agency to inspect or receive a copy of a public record or class of public records not exempted by this division, and the state or local agency fails or refuses to allow inspection or copying within 10 working days of that request, the district attorney may petition a court of competent jurisdiction to require the state or local agency to allow the requested inspection or copying.

(b) Unless the public interest or good cause in withholding the requested records clearly outweighs the public interest in disclosure, the court may require the public agency to allow the district attorney to inspect or copy those records.

7921.710. Disclosure of records to a district attorney under the provisions of this division shall effect no change in the status of the records under any other provision of law.

CHAPTER 3. General Rules Governing Exemptions from Disclosure

Article 1. Justification for Withholding of Record

7922.000. An agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Article 2. Social Security Numbers and Related Matters

7922.200. (a) It is the intent of the Legislature that, in order to protect against the risk of identity theft, a local agency shall redact social security numbers from a record before disclosing the record to the public pursuant to this division.

(b) Nothing in this division shall be construed to require a local agency to disclose a social security number.

(c) This section does not apply to a record maintained by a county recorder.

7922.205. Nothing in this division shall be construed to require the disclosure by a county recorder of any "official record," if a "public record" version of that record is available pursuant to Article 3.5 (commencing with Section 27300) of Chapter 6 of Part 3 of Division 2 of Title 3.

7922.210. Nothing in this division shall be construed to require the disclosure by a filing office of any "official filing," if a "public filing" version of that record is available pursuant to Section 9526.5 of the Commercial Code.

PART 3. PROCEDURES AND RELATED MATTERS

CHAPTER 1. Request for a Public Record

Article 1. General Principles

7922.500. Nothing in this division shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.

7922.505. Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this division.

Article 2. Procedural Requirements Generally

7922.525. (a) Public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, exempted as otherwise provided.

(b) Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

7922.530. (a) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(b) A requester who inspects a disclosable record on the premises of the agency has the right to use the requester's equipment on those premises, without being charged any fees or costs, to photograph or otherwise copy or reproduce the record in a manner that does not require the equipment to make physical contact with the record, unless the means of copy or reproduction would result in either of the following:

(1) Damage to the record.

(2) Unauthorized access to the agency's computer systems or secured networks by using software, equipment, or any other technology capable of accessing, altering, or compromising the agency's electronic records.

(c) The agency may impose any reasonable limits on the use of the requester's equipment that are necessary to protect the safety of the records or to prevent the copying of records from being an unreasonable burden to the orderly function of the agency and its employees. In addition, the agency may impose any limit that is necessary to maintain the integrity of, or ensure the long-term preservation of, historic or high-value records.

7922.535. (a) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. If the agency determines that the request seeks disclosable public records, the agency shall also state the estimated date and time when the records will be made available.

(b) In unusual circumstances, the time limit prescribed in this article and Article 1 (commencing with Section 7922.500) may be extended by written notice from the head of the agency or a designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days.

(c) As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

7922.540. (a) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

(b) The notification of denial shall set forth the names and titles or positions of each person responsible for the denial.

(c) An agency shall justify withholding any record by complying with Section 7922.000.

7922.545. (a) In addition to maintaining public records for public inspection during its office hours, a public agency may comply with Section 7922.525 by posting any public record on its internet website and, in response to a request for a public record posted on the internet website, directing a member of the public to the location on the internet website where the public record is posted.

(b) However, if after the public agency directs a member of the public to the internet website, the member of the public requesting the public record requests a copy of the public record due to an inability to access or reproduce the public

record from the internet website, the public agency shall promptly provide a copy of the public record pursuant to subdivision (a) of Section 7922.530.

Article 3. Information in Electronic Format

7922.570. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this division that is in an electronic format shall make that information available in an electronic format when requested by any person.

(b) When applicable, the agency shall do the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) The agency shall provide a copy of an electronic record in the format requested if the requested format is one that the agency has used to create copies for its own use or for provision to other agencies.

(c) If a request is for information in other than electronic format, and the information also is in electronic format, an agency may inform the requester that the information is available in electronic format.

7922.575. (a) The cost of duplication of an electronic record pursuant to paragraph (2) of subdivision (b) of Section 7922.570 shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with subdivisions (a) and (b) of Section 7922.570, the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

7922.580. (a) Nothing in Section 7922.570 or 7922.575 shall be construed to require a public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(b) Nothing in Section 7922.570 or 7922.575 shall be construed to permit an agency to make information available only in an electronic format.

(c) Nothing in Section 7922.570 or 7922.575 shall be construed to require a public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(d) Nothing in Section 7922.570 or 7922.575 shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

7922.585. (a) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(b) Computer software developed by a state or local agency is not itself a public record under this division. The agency may sell, lease, or license the software for commercial or noncommercial use.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this division.

(e) Nothing in this section is intended to limit any copyright protections.

Article 4. Duty to Assist in Formulating Request

7922.600. (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information

after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Article 1 (commencing with Section 7922.500) or Article 2 (commencing with Section 7922.525).

7922.605. This article shall not apply to a request for public records if any of the following applies:

(a) The public agency makes the requested records available pursuant to Article 1 (commencing with Section 7922.500) and Article 2 (commencing with Section 7922.525).

(b) The public agency makes an index of its records available.

(c) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 7920.505.

CHAPTER 2. Agency Regulations, Guidelines, Systems, and Similar Matters

Article 1. Agency Regulations and Guidelines

7922.630. Every agency may adopt regulations in accordance with this article stating the procedures to be followed when making its records available.

7922.635. (a) The following state and local bodies shall establish written guidelines for accessibility of records:

(1) All regional water quality control boards.

(2) Bay Area Air Pollution Control District.

(3) California Coastal Commission.

(4) Department of Business Oversight.

(5) Department of Consumer Affairs.

(6) Department of Corrections and Rehabilitation.

(7) Department of General Services.

(8) Department of Industrial Relations.

(9) Department of Insurance.

(10) Department of Justice.

(11) Department of Managed Health Care.

(12) Department of Motor Vehicles.

(13) Department of Parks and Recreation.

(14) Department of Real Estate.

(15) Department of Toxic Substances Control.

(16) Department of Veterans Affairs.

(17) Department of Water Resources.

(18) Division of Juvenile Justice.

(19) Employment Development Department.

(20) Golden Gate Bridge, Highway and Transportation District.

(21) Los Angeles County Air Pollution Control District.

(22) Office of Environmental Health Hazard Assessment.

(23) Public Employees' Retirement System.

(24) Public Utilities Commission.

(25) San Francisco Bay Area Rapid Transit District.

(26) San Francisco Bay Conservation and Development Commission.

(27) Secretary of State.

(28) State Air Resources Board.

(29) State Board of Equalization.

(30) State Department of Developmental Services.

(31) State Department of Health Care Services.

(32) State Department of Public Health.

(33) State Department of Social Services.

(34) State Department of State Hospitals.

(35) State Water Resources Control Board.

(36) Teachers' Retirement Board.

(37) Transportation Agency.

(b) A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request, free of charge, to any person requesting that body's records.

7922.640. (a) Guidelines and regulations adopted pursuant to this article shall be consistent with all other sections of this division and shall reflect the intention of the Legislature to make the records accessible to the public.

(b) Guidelines and regulations adopted pursuant to this article shall not operate to limit the hours public records are open for inspection as prescribed in Article 1 (commencing with Section 7922.500) and Article 2 (commencing with Section 7922.525).

Article 2. Internet Resources

7922.680. If a local agency, except a school district, maintains an internet resource, including, but not limited to, an internet website, internet web page, or internet web portal, which the local agency describes or titles as "open data," and the local agency voluntarily posts a public record on that internet resource, the local agency shall post the public record in an open format that meets all of the following requirements:

(a) Retrievable, downloadable, indexable, and electronically searchable by commonly used internet search applications.

(b) Platform independent and machine readable.

(c) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the public record.

(d) Retains the data definitions and structure present when the data was compiled, if applicable.

Article 3. Catalog of Enterprise Systems

7922.700. For purposes of this article:

(a) "Enterprise system" means a software application or computer system that satisfies all of the following conditions:

(1) It collects, stores, exchanges, and analyzes information that the agency uses.

(2) It is a multidepartmental system or a system that contains information collected about the public.

(3) It is a system of record.

(b) An "enterprise system" does not include any of the following:

(1) Information technology security systems, including firewalls and other cybersecurity systems.

(2) Physical access control systems, employee identification management systems, video monitoring, and other physical control systems.

(3) Infrastructure and mechanical control systems, including those that control or manage street lights, electrical, natural gas, or water or sewer functions.

(4) Systems related to 911 dispatch and operation or emergency services.

(5) Systems that would be restricted from disclosure pursuant to Section 7929.210.

(6) The specific records that the information technology system collects, stores, exchanges, or analyzes.

7922.705. For purposes of this article, "system of record" means a system that serves as an original source of data within an agency.

7922.710. (a) In implementing this division, each local agency, except a local educational agency, shall create a catalog of enterprise systems.

(b) The local agency shall complete and post the catalog as required by this article by July 1, 2016, and thereafter shall update the catalog annually.

7922.715. (a) The catalog of enterprise systems required by Section 7922.710 shall be made publicly available upon request in the office of the person or officer designated by the agency's legislative body.

(b) If the agency has an internet website, the catalog shall be posted in a prominent location on the agency's internet website.

7922.720. (a) The catalog of enterprise systems required by Section 7922.710 shall disclose a list of the enterprise systems utilized by the agency.

(b) For each system, the catalog shall also disclose all of the following:

(1) Current system vendor.

(2) Current system product.

(3) A brief statement of the system's purpose.

(4) A general description of categories or types of data.

(5) The department that serves as the system's primary custodian.

(6) How frequently system data is collected.

(7) How frequently system data is updated.

(c) If, on the facts of the particular case, the public interest served by not disclosing the information described in paragraph (1) or (2) of subdivision (b) clearly outweighs the public interest served by disclosure of the record, the local agency may instead provide a system name, brief title, or identifier of the system.

7922.725. (a) This article shall not be interpreted to limit a person's right to inspect public records pursuant to this division.

(b) Nothing in this article shall be construed to permit public access to records held by an agency to which access is otherwise restricted by statute or to alter the process for requesting a public record, as set forth in this division.

PART 4. ENFORCEMENT

CHAPTER 1. General Principles

7923.000. Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right under this division to inspect or receive a copy of any public record or class of public records.

7923.005. In a proceeding under Section 7923.000, the court shall set the times for hearings and responsive pleadings with the object of securing a decision as to the matters at issue at the earliest possible time.

CHAPTER 2. Enforcement Procedure

Article 1. Petition to Superior Court

7923.100. Whenever it is made to appear, by verified petition to the superior court of the county where the records or some part thereof are situated, that certain public records are being improperly withheld from a member of the public, the court shall order the officer or other person charged with withholding the records to disclose those records or show cause why that person should not do so.

7923.105. The court shall decide the case after the court does all of the following:

(a) Examine the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code.

(b) Examine any papers filed by the parties.

(c) Consider any oral argument and additional evidence as the court may allow.

7923.110. (a) If the court finds that the public official's decision to refuse disclosure is not justified under Section 7922.000 or any provision listed in Section 7920.505, the court shall order the public official to make the record public.

(b) If the court finds that the public official was justified in refusing to make the record public, the court shall return the record to the public official without disclosing its content, together with an order supporting the decision refusing disclosure.

7923.115. (a) If the requester prevails in litigation filed pursuant to this chapter, the court shall award court costs and reasonable attorney's fees to the requester. The costs and fees shall be paid by the public agency and shall not become a personal liability of the public official involved.

(b) If the court finds that a requester's case pursuant to this chapter is clearly frivolous, the court shall award court costs and reasonable attorneys' fees to the public agency.

(c) This article does not limit a requester's right to obtain fees and costs pursuant to this section or any other law.

Article 2. Writ Review and Contempt

7923.500. (a) An order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately

reviewable by petition to the appellate court for the issuance of an extraordinary writ.

(b) Upon entry of any order pursuant to this chapter, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon the party of a written notice of entry of the order, or within a further time, not exceeding an additional 20 days, as the trial court may for good cause allow.

(c) If the notice is served by mail, the period within which to file the petition shall be increased by five days.

(d) A stay of an order or judgment shall not be granted unless the petitioning party demonstrates that the party will otherwise sustain irreparable damage and probable success on the merits.

(e) Any person who fails to obey the order of the court shall be cited to show cause why that person is not in contempt of court.

PART 5. SPECIFIC TYPES OF PUBLIC RECORDS

CHAPTER 1. Crimes, Weapons, and Law Enforcement

Article 1. Law Enforcement Records Generally

7923.600. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.

(b) A customer list that an alarm or security company provides to a state or local police agency at the agency's request is a record subject to this article.

7923.605. (a) Notwithstanding Section 7923.600, a state or local law enforcement agency shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny,

robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger either of the following:

(1) The safety of a witness or other person involved in the investigation.

(2) The successful completion of the investigation or a related investigation.

(b) However, this article does not require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

7923.610. Notwithstanding any other provision of this article, a state or local law enforcement agency shall make public all of the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(a) The full name and occupation of every individual arrested by the agency.

(b) The individual's physical description including date of birth, color of eyes and hair, sex, height, and weight.

(c) The time and date of arrest.

(d) The time and date of booking.

(e) The location of the arrest.

(f) The factual circumstances surrounding the arrest.

(g) The amount of bail set.

(h) The time and manner of release or the location where the individual is currently being held.

(i) All charges the individual is being held upon, including any outstanding warrants from other jurisdictions, parole holds, and probation holds.

7923.615. (a) (1) Notwithstanding any other provision of this article, a state or local law enforcement agency shall make public the information described in paragraph (2), except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, paragraph (1) applies to the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded:

(A) The time, date, and location of occurrence.

(B) The time and date of the report.

(C) The name and age of the victim.

(D) The factual circumstances surrounding the crime or incident.

(E) A general description of any injuries, property, or weapons involved.

(b) (1) The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 287, 288, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of, or former Section 288a of, the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor.

(2) When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this article may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this section.

(c) (1) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete.

(2) For purposes of this article, "immediate family" has the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

7923.620. (a) Notwithstanding any other provision of this article, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions

Code, a state or local law enforcement agency shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) Subject to the restrictions of Section 841.5 of the Penal Code and this article, the current address of every individual arrested by the agency.

(2) Subject to the restrictions of Section 841.5 of the Penal Code and this article, the current address of the victim of a crime. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 287, 288, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of, or former Section 288a of, the Penal Code shall remain confidential.

(b) Address information obtained pursuant to this section shall not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(c) This section shall not be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this section.

7923.625. Notwithstanding any other provision of this article, commencing July 1, 2019, a video or audio recording that relates to a critical incident, as defined in subdivision (e), may be withheld only as follows:

(a) (1) During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this section, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

(2) After 45 days from the date the agency knew or reasonably should have known about the incident, and up to one year from that date, the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident,

the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. If an agency delays disclosure pursuant to this paragraph, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

(b) (1) If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.

(2) Except as provided in paragraph (3), if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction as described in paragraph (1) and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted as provided in paragraph (1) or unredacted, shall be disclosed promptly, upon request, to any of the following:

(A) The subject of the recording whose privacy is to be protected, or the subject's authorized representative.

(B) If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected.

(C) If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject whose privacy is to be protected.

(3) If disclosure pursuant to paragraph (2) would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure

would substantially interfere with the investigation, and provide the estimated date for the disclosure of the video or audio recording. Thereafter, the recording may be withheld by the agency for 45 calendar days, subject to extensions as set forth in paragraph (2) of subdivision (a).

(c) An agency may provide greater public access to video or audio recordings than the minimum standards set forth in this section.

(d) For purposes of this section, a peace officer does not include any peace officer employed by the Department of Corrections and Rehabilitation.

(e) For purposes of this section, a video or audio recording relates to a critical incident if it depicts any of the following incidents:

(1) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(2) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

(f) This section does not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident as described in subdivision (e).

7923.630. (a) Immediately before the CPRA Recodification Act of 2021, the other provisions in this article comprised a single subdivision of former Section 6254 (subdivision (f) of Section 29 of Chapter 385 of the Statutes of 2019).

(b) Dividing the substance of those provisions into multiple code sections was not intended to affect the construction of those provisions or their relation to each other.

Article 2. Obtaining Access to Law Enforcement Records

7923.650. The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under Article 1 (commencing with Section 7923.600) shall not apply when a district attorney requests inspection of those records.

7923.655. (a) A state or local law enforcement agency shall not require a victim of an incident, or an authorized representative of a victim, to show proof of the victim's legal presence in the United States in order to obtain the information required to be disclosed by that law enforcement agency pursuant to Article 1 (commencing with Section 7923.600).

(b) If, for identification purposes, a state or local law enforcement agency requires a victim of an incident, or an authorized representative of a victim, to provide identification in order to obtain information required to be disclosed by that law enforcement agency pursuant to Article 1 (commencing with Section 7923.600), the agency shall at a minimum accept any of the following:

(1) A current driver's license or identification card issued by any state in the United States.

(2) A current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship.

(3) A current Matricula Consular card.

Article 3. Records of Emergency Communications to Public Safety Authorities

7923.700. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of a record obtained pursuant to paragraph (2) of subdivision (f) of Section 2891.1 of the Public Utilities Code.

Article 4. Records Specifically Relating to Crime Victims

7923.750. (a) This division does not require disclosure of a video or audio recording that was created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording. An agency shall justify withholding that type of video or audio recording by demonstrating, pursuant to Section 7922.000 and subdivision (a) of Section 7922.540, that on the facts of the particular case, the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording.

(b) When balancing the public interests as required by this section, an agency shall consider both of the following:

(1) The constitutional right to privacy of the person or persons depicted in the recording.

(2) Whether the potential harm to the victim caused by disclosing the recording may be mitigated by redacting the recording to obscure images showing intimate body parts and personally identifying characteristics of the victim or by distorting portions of the recording containing the victim's voice, provided that the redaction does not prevent a viewer from being able to fully and accurately perceive the events captured on the recording. The recording shall not otherwise be edited or altered.

(c) A victim of a crime described in subdivision (a) who is a subject of a recording, the parent or legal guardian of a minor subject, a deceased subject's next of kin, or a subject's legally authorized designee, shall be permitted to inspect the recording and to obtain a copy of the recording. Disclosure under this subdivision does not require that the record be made available to the public pursuant to Section 7921.505.

(d) Nothing in this section shall be construed to affect any other exemption provided by this division.

7923.755. (a) This division does not require disclosure of a record of the California Victim Compensation Board that relates to a request for assistance under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2.

(b) This section shall not apply to a disclosure of the following information, if no information is disclosed that connects the information to a specific victim, derivative victim, or applicant under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2:

(1) The amount of money paid to a specific provider of services.

(2) Summary data concerning the types of crimes for which assistance is provided.

Article 5. Firearm Licenses and Related Records

7923.800. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of any of the following information contained in an application for a license to carry a firearm, issued by the sheriff of a county or the chief or other head of a municipal police department pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code:

(a) Information that indicates when or where the applicant is vulnerable to attack.

(b) Information that concerns the applicant's medical or psychological history, or that of members of the applicant's family.

7923.805. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of the home address or telephone number of any of the following individuals, as set forth in an application for a license to carry a firearm, or in a license to carry a firearm, issued by the sheriff of a county or the chief or other head of a municipal police department, pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code:

(a) A prosecutor.

(b) A public defender.

(c) A peace officer.

(d) A judge.

(e) A court commissioner.

(f) A magistrate.

CHAPTER 2. Election Materials and Petitions

Article 1. Voter Information

7924.000. (a) Except as provided in Section 2194 of the Elections Code, both of the following are confidential and shall not be disclosed to any person:

(1) The home address, telephone number, email address, precinct number, or other number specified by the Secretary of State for voter registration purposes.

(2) Prior registration information shown on an affidavit of registration.

(b) The California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on an affidavit of registration, or added to the voter registration records to comply with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.), are confidential and shall not be disclosed to any person.

(c) The signature of the voter that is shown on an affidavit of registration is confidential and shall not be disclosed to any person.

(d) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

7924.005. (a) Notwithstanding Sections 7920.510, 7920.515, 7920.520, 7920.530, 7920.540, 7920.545, 7922.545, subdivision (a) of Section 7920.525, subdivision (b) of Section 7922.540, and Sections 7922.500 to 7922.535, inclusive, information compiled by a public officer or public employee that reveals the identity of a person who has requested a bilingual ballot or ballot pamphlet, in accordance with any federal or state law, or other data that would reveal the identity of the requester, is not a public record and shall not be provided to any person other than a public officer or public employee who is responsible for receiving the request and processing it.

(b) Subdivision (a) does not prohibit a person, otherwise authorized by law, from examining election materials, including, but not limited to, an affidavit of registration, provided that a request for a bilingual ballot or ballot pamphlet is subject to the restrictions in subdivision (a).

Article 2. Initiative, Referendum, Recall, and Other Petitions and Related Materials

7924.100. As used in this article, "petition" means any petition to which a registered voter has affixed the voter's own signature.

7924.105. As used in this article, "proponent of the petition" means the following:

(a) For a statewide initiative or referendum measure, the person who submits a draft of a petition proposing the measure to the Attorney General with a request that the Attorney General prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referendum measures, the person who publishes a notice of intention to circulate a petition, or, where publication is not required, who files the petition with an elections official.

(c) For a recall measure, the person defined in Section 343 of the Elections Code.

(d) For a petition circulated pursuant to Section 5091 of the Education Code, the person having charge of the petition who submits the petition to the county superintendent of schools.

(e) For a petition circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of Division 3 of Title 2 of the Education Code, the person designated as chief petitioner under Section 35701 of the Education Code.

(f) For a petition circulated pursuant to Part 46 (commencing with Section 74000) of Division 7 of Title 3 of the Education Code, the person designated as chief petitioner under Section 74102, 74133, or 74152 of the Education Code.

7924.110. (a) Notwithstanding Sections 7920.510, 7920.515, 7920.520, 7920.530, 7920.540, 7920.545, 7922.545, subdivision (a) of Section 7920.525, subdivision (b) of Section 7922.540, and Sections 7922.500 to 7922.535, inclusive, the following are not public records:

(1) A statewide, county, city, or district initiative, referendum, or recall petition.

(2) A petition circulated pursuant to Section 5091 of the Education Code.

(3) A petition for reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of Division 3 of Title 2 of the Education Code.

(4) A petition for reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of Division 7 of Title 3 of the Education Code.

(5) A memorandum prepared by a county elections official in the examination of a petition, indicating which registered voters signed that particular petition.

(b) The materials described in subdivision (a) shall not be open to inspection except by the following persons:

(1) A public officer or public employee who has the duty of receiving, examining, or preserving the petition, or who is responsible for preparation of the memorandum.

(2) If a petition is found to be insufficient, by the proponent of the petition and a representative of the proponent as may be designated by the proponent in writing, in order to determine which signatures were disqualified and the reasons therefor.

(c) Notwithstanding subdivisions (a) and (b), the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a city attorney, a school district attorney, and a community college district attorney shall be permitted to examine the materials described in subdivision (a) upon approval of the appropriate superior court.

(d) If the proponent of a petition is permitted to examine a petition and a memorandum pursuant to subdivision (b), the examination shall commence not later than 21 days after certification of insufficiency, and the county elections official shall retain the documents as prescribed in Section 17200 of the Elections Code.

CHAPTER 3. Environmental Protection, Building Standards, and Safety Requirements

Article 1. Pesticide Safety and Efficacy Information Disclosable Under the Federal Insecticide, Fungicide, and Rodenticide Act

7924.300. If both of the following conditions are satisfied, nothing in this division exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under Section 10(d)(1) of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)):

(a) The individual requesting the information is not an officer, employee, or agent specified in subdivision (a) of Section 7924.310.

(b) The individual signs the affirmation specified in subdivision (b) of Section 7924.310.

7924.305. (a) The Director of Pesticide Regulation, upon the director's initiative, or upon receipt of a request pursuant to this division for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment before the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(b) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(c) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(d) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to this division of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to Section 7924.300.

(e) This article does not prohibit any person from maintaining a civil action for wrongful disclosure of a trade secret.

(f) "Trade secret" means data that is nondisclosable under Section 10(d)(1) of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)).

7924.310. (a) Unless the applicant or registrant consents to disclosure of information that the applicant or registrant submits to the state pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code, the Director of Pesticide Regulation shall not knowingly disclose any of that information to any of the following:

(1) An officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in a country other than the United States, or in a country in addition to the United States.

(2) Any other person who intends to deliver this information to any foreign or multinational business or entity.

(b) To implement this section, the director shall require a person requesting information described in subdivision (a) to sign the following affirmation:

AFFIRMATION OF STATUS

This affirmation is required by Article 1 (commencing with Section 7924.300) of Chapter 3 of Part 5 of Division 10 of Title 1 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent, engaged in the production, sale, or distribution of pesticides in a country other than the United States or in a country in addition to the United States, or to an officer, employee, or agent of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

Name of Requester

Name of Requester's Organization

Signature of Requester

Address of Requester

Date

Request No.

Telephone Number of Requester

Name, Address, and Telephone Number of Requester's Client, if the requester has requested access to the information on behalf of someone other than the requester or the requester's organization listed above.

(c) Section 118 of the Penal Code applies to any affirmation made pursuant to this article.

7924.315. Notwithstanding any other provision of this article, if the Director of Pesticide Regulation determines that information submitted by an applicant or registrant is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment, the director may disclose that information to any person in connection with a public proceeding conducted under law or regulation.

7924.320. The Director of Pesticide Regulation shall maintain records of the names of persons to whom data is disclosed pursuant to this article and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

7924.325. The Director of Pesticide Regulation may limit an individual to one request per month pursuant to this article if the director determines that a person has made a frivolous request within the past 12-month period.

7924.330. (a) Any officer or employee of the state, or former officer or employee of the state, who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this article, and who, knowing that disclosure of this material is prohibited by this article, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

(b) For purposes of this section, any contractor with the state who is furnished information pursuant to this article, or any employee of any contractor, shall be considered an employee of the state.

7924.335. This article shall be operative only so long as, and to the extent that, enforcement of Section 10(d)(1) of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)) has not been enjoined by federal court order. If a final and unappealable federal court judgment or decision holds that paragraph invalid, this article shall become inoperative, to the extent of the invalidity.

Article 2. Pollution

7924.500. Nothing in this division requires the disclosure of records that relate to volatile organic compound or chemical substance information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

7924.505. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of financial data contained in an application for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, if an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain a guarantee from the United States Small Business Administration.

(b) The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this division.

7924.510. (a) Any information, analysis, plan, or specification that discloses the nature, extent, quantity, or degree of an air contaminant or other pollution that any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, is a public record.

(b) All air or other pollution monitoring data, including data compiled from a stationary source, are public records.

(c) Except as otherwise provided in subdivision (d) and Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code, a trade secret is not a public record under this section or Section 7924.700.

(d) Notwithstanding any other provision of law, all air pollution emission data, including those emission data that constitute trade secrets as defined in subdivision (f), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data that constitute trade secrets and that are used to calculate emission data are not public records.

(e) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant

consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

(f) As used in this section, "trade secret" may include, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that satisfies all of the following requirements:

(1) It is not patented.

(2) It is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value.

(3) It gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Article 3. Building Standards and Safety Requirements

7924.700. (a) A record of a notice or an order that is directed to the owner of any building and relates to violation of a housing or building code, ordinance, statute, or regulation that constitutes a violation of a standard provided in Section 1941.1 of the Civil Code is a public record.

(b) A record of subsequent action with respect to a notice or order described in subdivision (a) is a public record.

Article 4. Enforcement Orders

7924.900. (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity's internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this division.

(b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

(3) The State Water Resources Control Board, and each California regional water quality control board.

(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

(c) (1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.

(2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that entity at a public meeting.

(d) An order posted pursuant to this section shall be posted for not less than one year.

(e) The California Environmental Protection Agency shall oversee the implementation of this section.

CHAPTER 4. Financial Records and Tax Records

7925.000. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of information required from any taxpayer in connection with the collection of local taxes if that information is received in confidence and disclosure of it to other persons would result in unfair competitive disadvantage to the person supplying the information.

7925.005. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of a statement of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish the applicant's personal qualification for the license, certificate, or permit requested.

7925.010. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of any of the following records:

(a) Financial data contained in an application for registration, or registration renewal, as a service contractor, which is filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth.

(b) Financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

7925.015. This division does not require the disclosure of records that the Controller and third-party auditors obtain the possession of as a result of an examination of records pursuant to Section 1571 of the Code of Civil Procedure, other than records of property that should have been reported to the Controller as unclaimed property.

CHAPTER 5. Health Care

Article 1. Accreditation

7926.000. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of a final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Public Health pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

Article 2. Advance Health Care Directive and Related Matters

7926.100. (a) Except as provided in subdivision (b) and in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of any information that a person provides to the Secretary of State for the purpose of registration in the Advance Health Care Directive Registry.

(b) The information described in subdivision (a) shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

Article 3. Contracts and Negotiations

7926.200. The provisions listed in Section 7920.505 do not prevent any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158).

7926.205. (a) Nothing in this division or any other provision of law requires disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed.

(b) Transmission of the records described in subdivision (a), or the information contained therein in an alternative form, to the board of supervisors is not a waiver of exemption from disclosure. The records and information once transmitted to the board of supervisors remain subject to the exemption described in subdivision (a).

(c) (1) This section does not prevent the Joint Legislative Audit Committee from accessing any records 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.

(2) This section does not prevent the Department of Managed Health Care from accessing any records 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.

7926.210. (a) Except as provided in subdivision (b) or in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4, that relate to a contract with an insurer or a nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code.

(b) A record described in subdivision (a) shall be open to inspection within one year after the contract is fully executed.

7926.215. (a) Except as provided in Sections 7924.510, 7924.700, and the provisions listed in Section 7920.505, this division does not require disclosure of records of the Department of Corrections and Rehabilitation that relate to health care services contract negotiations, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations, such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance Commission, or its staff, who act in consultation with, or on behalf of, the department.

(b) (1) Except for the portion that contains the rates of payment, a contract for health services entered into by the Department of Corrections and Rehabilitation or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after it is fully executed.

(2) If a contract for health services was entered into before July 1, 1993, and amended on or after July 1, 1993, the amendment, except for any portion

containing rates of payment, shall be open to inspection one year after it is fully executed.

(c) Three years after a contract or amendment is open to inspection under this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) (1) Notwithstanding any other provision of law, including, but not limited to, Section 1060 of the Evidence Code, the entire contract or amendment shall be open to inspection by the California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office.

(2) The California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office shall maintain the confidentiality of each contract or amendment until the contract or amendment is fully open to inspection by the public.

(e) It is the intent of the Legislature that the confidentiality of health care provider contracts, and of the contracting process as provided in this section, shall protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.

7926.220. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of a state agency related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), or Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

(b) (1) Except for the portion containing the rates of payment, a contract for inpatient services entered into pursuant to one of these articles, on or after April 1, 1984, shall be open to inspection one year after it is fully executed.

(2) If a contract for inpatient services was entered into before April 1, 1984, and amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed.

(3) If the California Medical Assistance Commission enters into a contract with a health care provider for other than inpatient hospital services, the contract shall be open to inspection one year after it is fully executed.

(c) Three years after a contract or amendment is open to inspection under this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) (1) Notwithstanding any other law, the entire contract or amendment shall be open to inspection by the California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office.

(2) The California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office shall maintain the confidentiality of each contract or amendment until the contract or amendment is fully open to inspection by the public.

7926.225. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services that relate to activities governed by former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), former Part 6.6 (commencing with Section 12739.5), or former Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, and that reveal any of the following:

(1) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or the department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or the department provides, receives, or arranges services or reimbursement.

(2) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff or the department or its staff, or records that provide instructions, advice, or training to their employees.

(b) (1) Except for the portion that contains the rates of payment, a contract entered into pursuant to former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), former Part 6.6 (commencing with Section 12739.5), or former Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, on or after July 1, 1991, shall be open to inspection one year after its effective date.

(2) If a contract was entered into before July 1, 1991, and amended on or after July 1, 1991, the amendment, except for any portion containing the rates of

payment, shall be open to inspection one year after the effective date of the amendment.

(c) Three years after a contract or amendment is open to inspection pursuant to this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) (1) Notwithstanding any other law, the entire contract or amendment to a contract shall be open to inspection by the California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office.

(2) The California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office shall maintain the confidentiality of each contract or amendment until the contract or amendment is open to inspection pursuant to subdivision (c).

7926.230. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, if the records reveal any of the following:

(1) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or department provides, receives, or arranges services or reimbursement.

(2) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, or records that provide instructions, advice, or training to employees.

(b) (1) Except for the portion that contains the rates of payment, a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code shall be open to inspection one year after its effective date.

(2) If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the

Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

(c) Three years after a contract or amendment is open to inspection pursuant to this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) (1) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office.

(2) The California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office shall maintain the confidentiality of each contract or amendment until the contract or amendment is open to inspection pursuant to subdivision (b) or (c).

(e) The exemption from disclosure provided pursuant to this section for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code.

7926.235. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the Managed Risk Medical Insurance Board that relate to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(b) Except for the portion that contains the rates of payment, a contract for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after it has been fully executed.

(c) (1) Notwithstanding any other law, the entire contract or amendment to a contract shall be open to inspection by the Joint Legislative Audit Committee.

(2) The committee shall maintain the confidentiality of each contract or amendment until the contract or amendment is open to inspection pursuant to subdivision (b).

Article 4. In-Home Supportive Services and Personal Care Services

7926.300. (a) Notwithstanding any other provision of this division, information regarding persons paid by the state to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code or personal care services pursuant to Section 14132.95, 14132.952, 14132.956, or 14132.97 of the Welfare and Institutions Code, and information about persons who have completed the form described in subdivision (a) of Section 12305.81 of the Welfare and Institutions Code for the provider enrollment process, is not subject to public disclosure pursuant to this division, except as provided in subdivision (b).

(b) Copies of names, addresses, home telephone numbers, personal cellular telephone numbers, written or spoken languages, if known, and personal email addresses of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to subdivision (c) of Section 12301.6, or Section 12302.5, of the Welfare and Institutions Code or Chapter 10 (commencing with Section 3500) of Division 4. This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.

(c) This section applies solely to individuals who provide services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code), the Personal Care Services Program pursuant to Section 14132.95 of the Welfare and Institutions Code, the In-Home Supportive Services Plus Option Program pursuant to Section 14132.952 of the Welfare and Institutions Code, the Community First Choice Option Program pursuant to Section 14132.956 of the Welfare and Institutions Code, or the Waiver Personal Care Services Program pursuant to Section 14132.97 of the Welfare and Institutions Code.

(d) This section does not alter the rights of parties under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4) or any other labor relations law.

Article 5. Reproductive Health Services Facility

7926.400. For purposes of this article, the following terms have the following meanings:

(a) "Contractor" means an individual or entity that contracts with a reproductive health services facility for services related to patient care.

(b) "Personal information" means any of the following information related to an individual that is maintained by a public agency:

(1) Social security number.

(2) Physical description.

(3) Home address.

(4) Home telephone number.

(5) Statements of personal worth or personal financial data filed pursuant to Section 7925.005.

(6) Personal medical history.

(7) Employment history.

(8) Electronic mail address.

(9) Information that reveals any electronic network location or identity.

(c) "Public agency" means all of the following:

(1) The Department of Consumer Affairs.

(2) The Department of Managed Health Care.

(3) The State Department of Health Care Services.

(4) The State Department of Public Health.

(d) "Reproductive health services facility" means the office of a licensed physician and surgeon whose specialty is family medicine, obstetrics, or gynecology, or a licensed clinic, where at least 50 percent of the patients of the physician or the clinic are provided with family planning or abortion services.

7926.405. This division does not require disclosure of any personal information received, collected, or compiled by a public agency regarding the employees,

volunteers, board members, owners, partners, officers, or contractors of a reproductive health services facility who have notified the public agency pursuant to Section 7926.415 if the personal information is contained in a document that relates to the facility.

7926.410. (a) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to obtain access to employment history information of a reproductive health services facility pursuant to Part 4 (commencing with Section 7923.000).

(b) If the court finds, based on the facts of a particular case, that the public interest served by disclosure of employment history information of a reproductive health services facility clearly outweighs the public interest served by not disclosing the information, the court shall order the officer or person charged with withholding the information to disclose employment history information or show cause why that officer or person should not disclose pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4.

7926.415. (a) In order for this article to apply to an individual who is an employee, volunteer, board member, officer, or contractor of a reproductive health services facility, the individual shall notify the public agency to which the individual's personal information is being submitted or has been submitted that the individual falls within the application of this article.

(b) Notification pursuant to subdivision (a) is valid if it complies with all of the following:

(1) It is on the official letterhead of the facility.

(2) It is clearly separate from any other language present on the same page and is executed by a signature that serves no other purpose than to execute the notification.

(3) It is signed and dated by both of the following:

(A) The individual whose information is being submitted.

(B) The executive officer of the reproductive health services facility or designee of the executive officer.

(c) A reproductive health services facility shall retain a copy of all notifications submitted pursuant to this article.

7926.420. The privacy protections for personal information authorized pursuant to this article are effective from the time of notification pursuant to Section 7926.415 until either one of the following occurs:

(a) Six months after the date of separation from a reproductive health services facility for an individual who has served for not more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

(b) One year after the date of separation from a reproductive health services facility for an individual who has served for more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

7926.425. Within 90 days of separation of an employee, contractor, volunteer, board member, or officer of the reproductive health services facility who has provided notice to a public agency pursuant to Section 7926.415, the facility shall provide notice of the separation to the relevant agency or agencies.

7926.430. This section does not prevent a government agency from disclosing data regarding the age, race, ethnicity, national origin, or gender of individuals whose personal information is protected pursuant to this article if the data does not contain individually identifiable information.

Article 6. Websites and Related Matters

7926.500. In implementing this division, each health care district shall maintain an internet website in accordance with subdivision (b) of Section 32139 of the Health and Safety Code.

CHAPTER 6. Historically or Culturally Significant Matters

7927.000. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any of the following:

(a) Records of Native American graves, cemeteries, and sacred places.

(b) Records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code, which are maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

7927.005. Nothing in this division requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency.

CHAPTER 7. Library Records and Similar Matters

7927.100. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes.

(b) The exemption in this section does not apply to records of fines imposed on the borrowers.

7927.105. (a) As used in this section, the term "patron use records" includes both of the following:

(1) Any written or electronic record that is used to identify a library patron and is provided by the patron to become eligible to borrow or use books and other materials. This includes, but is not limited to, a patron's name, address, telephone number, or email address.

(2) Any written record or electronic transaction that identifies a patron's borrowing information or use of library information resources. This includes, but is not limited to, database search records, borrowing records, class records, and any other personally identifiable uses of library resources, information requests, or inquiries.

(b) This section does not apply to either of the following:

(1) Statistical reports of patron use.

(2) Records of fines collected by a library.

(c) All patron use records of a library that is in whole or in part supported by public funds shall remain confidential. A public agency, or a private actor that maintains or stores patron use records on behalf of a public agency, shall not disclose those records to any person, local agency, or state agency, except as follows:

(1) By a person acting within the scope of the person's duties within the administration of the library.

(2) By a person authorized in writing to inspect the records. The authorization shall be from the individual to whom the records pertain.

(3) By order of the appropriate superior court.

CHAPTER 8. Litigation Records and Similar Matters

7927.200. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any of the following records:

(a) Records pertaining to pending litigation to which the public agency is a party, until the pending litigation has been finally adjudicated or otherwise settled.

(b) Records pertaining to a claim made pursuant to Division 3.6 (commencing with Section 810), until the pending claim has been finally adjudicated or otherwise settled.

7927.205. Nothing in this division or any other provision of law requires disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (e) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum is protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

CHAPTER 9. Miscellaneous Public Records

7927.300. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

7927.305. (a) Notwithstanding any other provision of this division to the contrary, information regarding family childcare providers, as defined in subdivision (b) of Section 8431 of the Education Code, shall not be subject to public disclosure pursuant to this division, except as provided in subdivisions (b) and (c).

(b) Consistent with Section 8432 of the Education Code, copies of names, home and mailing addresses, county, home, if known, work, and cellular telephone numbers, and email addresses of persons described in subdivision (a) shall be made available, upon request, to provider organizations that have been determined to be a provider organization pursuant to subdivision (a) of Section 8432 of the Education Code. Information shall be made available consistent with the deadlines set in Section 8432 of the Education Code. This information shall not be used by the receiving entity for any purpose other than for purposes of organizing, representing, and assisting family childcare providers.

(c) Consistent with Section 8432 of the Education Code, copies of names, home and mailing addresses, county, home, if known, work, and cellular telephone numbers, and email addresses of persons described in subdivision (a) shall be made available to a certified provider organization, as defined in subdivision (a)

of Section 8431 of the Education Code. Information shall be made available consistent with the deadlines set in Section 8432 of the Education Code. This information shall not be used by the receiving entity for any purpose other than for purposes of organizing, representing, and assisting family childcare providers.

(d) This section does not prohibit or limit the disclosure of information otherwise required to be disclosed by the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70) of, Chapter 3.5 (commencing with Section 1596.90) of, and Chapter 3.6 (commencing with Section 1597.30) of, Division 2 of the Health and Safety Code), or to an officer or employee of another state public agency for performance of their official duties under state law.

(e) All confidentiality requirements applicable to recipients of information pursuant to Section 1596.86 of the Health and Safety Code shall apply to protect the personal information of providers of small family daycare homes, as defined in Section 1596.78 of the Health and Safety Code, that is disclosed pursuant to subdivisions (b) and (c).

(f) A family childcare provider, as defined by subdivision (b) of Section 8431 of the Education Code, may opt out of disclosure of their home and mailing address, home, work, and cellular telephone numbers, and email address from the lists described in subdivisions (c) and (d) of Section 8432 of the Education Code by complying with the procedure set forth in subdivision (k) of Section 8432 of the Education Code.

CHAPTER 10. Personal Information and Customer Records

7927.400. Nothing in this division requires the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, that is received, collected, or compiled by a state agency.

7927.405. Nothing in this division requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

7927.410. Nothing in this division requires the disclosure of the name, credit history, utility usage data, home address, or telephone number of a utility customer of a local agency, except that disclosure of the name, utility usage data, and the home address of a utility customer of a local agency shall be made available upon request as follows:

(a) To an agent or authorized family member of the person to whom the information pertains.

(b) To an officer or employee of another governmental agency when necessary for the performance of its official duties.

(c) Upon court order or the request of a law enforcement agency relative to an ongoing investigation.

(d) Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.

(e) Upon determination by the local agency that the utility customer who is the subject of the request is an elected or appointed official with authority to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without the official's consent.

(f) Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

7927.415. Except as provided in Sections 7924.510 and 7924.700, nothing in this division requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

7927.420. Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the Welfare and Institutions Code, after the death of a foster child who is a minor, the name, date of birth, and date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to this division.

7927.425. This division does not require the disclosure of the following records and information provided to the Controller's office:

(a) Records related to statements of personal worth or personal financial data, including, but not limited to, wills, trusts, account statements, earnings statements, or other similar records.

(b) Personal information, as defined by subdivision (a) of Section 1798.3 of the Civil Code, within records, including, but not limited to:

(1) Social security number.

(2) Date of birth.

(3) Federal employer identification number, until the Controller has made payment of the property in full to the owner.

(4) Account number, until the Controller has made payment of the property in full to the owner.

(5) Check number, until the Controller has made payment of the property in full to the owner.

7927.430. A Judicial Council form provided to request service pursuant to Section 26666.10, and the information contained therein, is confidential and shall not be disclosed pursuant to this division.

CHAPTER 11. Preliminary Drafts and Similar Materials

7927.500. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by a public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

CHAPTER 12. Private Industry

7927.600. Whenever a city and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the United States Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

7927.605. (a) Nothing in this division requires the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.

(b) Except as provided in subdivision (c), incentives offered by a state or a local government agency, if any, shall be disclosed upon communication to the agency or the public of a decision to stay, locate, relocate, or expand, by a company, or upon application by that company to a governmental agency for a general plan amendment, rezone, use permit, building permit, or any other permit, whichever occurs first.

(c) Before publicly disclosing a record that describes state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand

the business within California, the agency shall delete information that is exempt pursuant to this section.

CHAPTER 13. Private Records, Privileged Materials, and Other Records Protected by Law From Disclosure

7927.700. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

7927.705. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

CHAPTER 14. Public Employee or Official

Article 1. The Governor

7928.000. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary.

(b) Public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this division.

7928.005. (a) When the Governor leaves office, either voluntarily or involuntarily, public records in the custody or control of the Governor shall be transferred to the State Archives as soon as practical.

(b) Notwithstanding any other law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings the Governor may transfer that have not already been made accessible to the public.

(c) With respect to public records, public access, as otherwise provided for by this division, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later, nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases that have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section or Section 7928.010, the Secretary of State, as custodian of the State Archives, shall make all those public records and other writings available to the public as otherwise provided for in this division.

7928.010. (a) (1) For a Governor who held office between 1974 and 1988, Section 7928.005 does not apply to public records or other writings that were in the Governor's direct custody or control at the time of leaving office, except to the extent that the Governor may voluntarily transfer those records or other writings to the State Archives.

(2) Subdivision (a) does not apply to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition.

(b) (1) Notwithstanding any other law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California. With respect to public records, however, public access, as otherwise provided for by this division, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later.

(2) Records or writings shall not be transferred pursuant to this subdivision unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards.

(3) An institution receiving public records pursuant to this subdivision shall not destroy any of those records without first receiving the written approval of the Secretary of State, as custodian of the State Archives. The Secretary of State may require that the records be placed in the State Archives rather than being destroyed.

(4) An institution receiving records or writings pursuant to this subdivision shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records that the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the originals.

7928.015. (a) The Secretary of State may appraise and manage new or existing records that are subject to Section 7928.005 or 7928.010 to determine whether the records are appropriate for preservation in the State Archives.

(b) For purposes of this section, the Secretary of State shall use professional archival practices, including, but not limited to, appraising the historic value of the records, arranging and describing the records, rehousing the records in appropriate storage containers, or providing any conservation treatment that the records require.

Article 2. The Legislature

7928.100. (a) Except as provided in subdivision (b) and in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any records that are in the custody of, or maintained by, the Legislative Counsel.

(b) Subdivision (a) does not apply to records in the public database maintained by the Legislative Counsel that are described in Section 10248.

Article 3. Online Posting or Sale of Personal Information of Elected or Appointed Official

7928.200. (a) Nothing in this article is intended to preclude punishment instead under Section 69, 76, or 422 of the Penal Code, or any other law.

(b) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this article unless the service or provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.

7928.205. No state or local agency shall post the home address or telephone number of any elected or appointed official on the internet without first obtaining the written permission of that individual.

7928.210. (a) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child, on the internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual.

(b) A violation of this section is a misdemeanor.

(c) A violation of this section that leads to the bodily injury of the official, or the official's residing spouse or child, is a misdemeanor or a felony.

7928.215. (a) For purposes of this section, "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(b) No person, business, or association shall publicly post or publicly display on the internet the home address or telephone number of any elected or appointed official if that official has, either directly or through an agent designated under Section 7928.220, made a written demand of that person, business, or association to not disclose the official's home address or telephone number.

(c) A written demand made under this section by a state constitutional officer, a mayor, or a Member of the Legislature, a city council, or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.

(d) A written demand made under this section by an elected official shall be effective for four years, regardless of whether the official's term has expired before the end of the four-year period.

(e) (1) A person, business, or association that receives the written demand of an elected or appointed official pursuant to this section shall remove the official's home address or telephone number from public display on the internet, including information provided to cellular telephone applications, within 48 hours of delivery of the written demand, and shall continue to ensure that this information is not reposted on the same internet website, subsidiary site, or any other internet website maintained by the recipient of the written demand.

(2) After receiving the elected or appointed official's written demand, the person, business, or association shall not transfer the appointed or elected official's home address or telephone number to any other person, business, or association through any other medium.

(3) Paragraph (2) does not prohibit a telephone corporation, as defined in Section 234 of the Public Utilities Code, or its affiliate, from transferring the elected or appointed official's home address or telephone number to any person, business, or association, if the transfer is authorized by federal or state law, regulation, order, or tariff, or necessary in the event of an emergency, or to collect a debt owed by the elected or appointed official to the telephone corporation or its affiliate.

7928.220. (a) An elected or appointed official may designate in writing the official's employer, a related governmental entity, or any voluntary professional association of similar officials to act, on behalf of that official, as that official's agent with regard to making a written demand pursuant to this article.

(b) An appointed official who is a district attorney, a deputy district attorney, or a peace officer, as defined in Sections 830 to 830.65, inclusive, of the Penal Code, may also designate the official's recognized collective bargaining representative to make a written demand on the official's behalf pursuant to this article.

(c) A written demand made by an agent pursuant to Section 7928.215 shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.

7928.225. (a) An official whose home address or telephone number is made public as a result of a violation of Section 7928.215 may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction.

(b) If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorneys' fees.

(c) A fine not exceeding one thousand dollars ($1,000) may be imposed for a violation of the court's order for an injunction or declarative relief obtained pursuant to this section.

7928.230. (a) No person, business, or association shall solicit, sell, or trade on the internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official's home address.

(b) Notwithstanding any other law, an official whose home address or telephone number is solicited, sold, or traded in violation of subdivision (a) may bring an action in any court of competent jurisdiction.

(c) If a jury or court finds that a violation has occurred, it shall award damages to that official in an amount up to a maximum of three times the actual damages but in no case less than four thousand dollars ($4,000).

Article 4. Personal Information of Agency Employee

7928.300. (a) The home addresses, home telephone numbers, personal cellular telephone numbers, and birthdates of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another public agency when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and any phone numbers on file with the employer of employees performing law enforcement-related functions, and the birthdate of any employee, shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to public agencies and their enrolled

dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) (1) Unless used by the employee to conduct public business, or necessary to identify a person in an otherwise disclosable communication, the personal email addresses of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(2) This subdivision shall not be construed to limit the public's right to access the content of an employee's personal email that is used to conduct public business, as decided by the Supreme Court in City of San Jose v. Superior Court (2017) 2 Cal.5th 608.

(c) Upon written request of any employee, a public agency shall not disclose the employee's home address, home telephone number, personal cellular telephone number, personal email address, or birthdate pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address, home telephone number, and personal cellular telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

Article 5. Employment Contracts of Government Employees and Related Matters

7928.400. Every employment contract between a state or local agency and any public official or public employee is a public record that is not subject to Section 7922.000 and the provisions listed in Section 7920.505.

7928.405. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, and Article 19.5 (commencing with Section 8430) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters.

(b) This section shall not be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this section.

7928.410. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of records of local agencies related to activities governed by Chapter 10 (commencing with Section 3500) of Division 4, that reveal a local agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under that chapter.

(b) This section shall not be construed to limit the disclosure duties of a local agency with respect to any other records relating to the activities governed by the employee relations act referred to in this section.

CHAPTER 15. Public Entity Spending, Finances, and Oversight

Article 1. Access in General

7928.700. Notwithstanding any contract term to the contrary, a contract entered into by a state or local agency subject to this division, including the University of California, that requires a private entity to review, audit, or report on any aspect of that agency shall be public to the extent the contract is otherwise subject to disclosure under this division.

7928.705. (a) Except as provided in subdivision (b) and in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of the contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by a state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained.

(b) This section does not affect the law of eminent domain.

7928.710. (a) For purposes of this section, the following definitions apply:

(1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.

(3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.

(4) "Public investment fund" means any public pension or retirement system, any public endowment or foundation, or a public bank, as defined in Section 57600.

(b) Notwithstanding any provision of this division or other law, the following records regarding alternative investments in which public investment funds invest are not subject to disclosure pursuant to this division, unless the information has already been publicly released by the keeper of the information:

(1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.

(2) Quarterly and annual financial statements of alternative investment vehicles.

(3) Meeting materials of alternative investment vehicles.

(4) Records containing information regarding the portfolio positions in which alternative investment funds invest.

(5) Capital call and distribution notices.

(6) Alternative investment agreements and all related documents.

(c) Notwithstanding subdivision (b), the following information contained in records described in subdivision (b) regarding alternative investments in which public investment funds invest is subject to disclosure pursuant to this division and shall not be considered a trade secret exempt from disclosure:

(1) The name, address, and vintage year of each alternative investment vehicle.

(2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.

(3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.

(4) The dollar amount, on a fiscal year-end basis, of cash distributions received by the public investment fund from each alternative investment vehicle.

(5) The dollar amount, on a fiscal year-end basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.

(6) The net internal rate of return of each alternative investment vehicle since inception.

(7) The investment multiple of each alternative investment vehicle since inception.

(8) The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis, by the public investment fund to each alternative investment vehicle.

(9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.

7928.715. Nothing in this division requires disclosure of an identification number, alphanumeric character, or other unique identifying code that a public agency uses to identify a vendor or contractor, or an affiliate of a vendor or contractor, unless the identification number, alphanumeric character, or other unique identifying code is used in a public bidding or an audit involving the public agency.

7928.720. Notwithstanding Sections 7920.510, 7920.515, 7920.520, 7920.530, 7920.540, and 7920.545, and subdivision (a) of Section 7920.525, an itemized statement of the total expenditures and disbursements of any agency provided for in Article VI of the California Constitution shall be open for inspection.

Article 2. Requirements Specific to Online Access

7928.800. In implementing this division, each independent special district shall maintain an internet website in accordance with Section 53087.8.

CHAPTER 16. Regulation of Financial Institutions and Securities

7929.000. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records contained in, or related to, any of the following:

(a) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(b) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in subdivision (a).

(c) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in subdivision (a).

(d) Information received in confidence by any state agency referred to in subdivision (a).

7929.005. (a) Any information reported to the North American Securities Administrators Association/Financial Industry Regulatory Authority and compiled as disciplinary records that are made available to the Department of Business Oversight through a computer system constitutes a public record.

(b) Notwithstanding any other provision of law, upon written or oral request pursuant to Section 25247 of the Corporations Code, the Department of Business Oversight may disclose any of the following:

(1) The information described in subdivision (a).

(2) The current license status of a broker-dealer.

(3) The year of issuance of the license of a broker-dealer.

7929.010. (a) For purposes of this section, the following definitions apply:

(1) "Customer" means a person or entity that has transacted or is transacting business with or has used or is using the services of a public bank or a person or entity for whom the public bank has acted as a fiduciary with respect to trust property.

(2) "Investment recipient" means an entity in which the public bank invests.

(3) "Loan recipient" means an entity or individual that has received a loan from the public bank.

(4) "Personal data" means social security numbers, tax identification numbers, physical descriptions, home addresses, home telephone numbers, statements of personal worth or any other personal financial data, employment histories, electronic mail addresses, and information that reveals any electronic network location or identity.

(5) "Public bank" has the same meaning as defined in Section 57600.

(b) Notwithstanding any other provision of this division, the following information and records of a public bank and the related decisions of the directors, officers, and managers of a public bank are not subject to disclosure pursuant to this division, unless the information has already been publicly released by the custodian of the information:

(1) Due diligence materials that are proprietary to the public bank.

(2) A memorandum or letter produced and distributed internally by the public bank.

(3) A commercial or personal financial statement or other financial data received from an actual or potential customer, loan recipient, or investment recipient.

(4) Meeting materials of a closed-session meeting, or a closed-session portion of a meeting, of the board of directors, a committee of the board of directors, or executives of a public bank.

(5) A record containing information regarding a portfolio position in which the public bank invests.

(6) A record containing information regarding a specific loan amount or loan term, or information received from a loan recipient or customer pertaining to a loan or an application for a loan.

(7) A capital call or distribution notice, or a notice to a loan recipient or customer regarding a loan or account with the public bank.

(8) An investment agreement, loan agreement, deposit agreement, or a related document.

(9) Specific account information or other personal data received by the public bank from an actual or potential customer, investment recipient, or loan recipient.

(10) A memorandum or letter produced and distributed for purposes of meetings with a federal or state banking regulator.

(11) A memorandum or letter received from a federal or state banking regulator.

(12) Meeting materials of the internal audit committee, the compliance committee, or the governance committee of the board of directors of a public bank.

(c) Notwithstanding subdivision (b), the following information contained in records described in subdivision (b) is subject to disclosure pursuant to this division and is not a trade secret exempt from disclosure:

(1) The name, title, and appointment year of each director and executive of the public bank.

(2) The name and address of each current investment recipient in which the public bank currently invests.

(3) General internal performance metrics of the public bank and financial statements of the bank, as specified or required by the public bank's charter or as required by federal law.

(4) Final audit reports of the public bank's independent auditors, although disclosure to an independent auditor of any information described in subdivision (b) shall not be construed to permit public disclosure of that information provided to the auditor.

7929.011. (a) Notwithstanding any other provision of this chapter, the following information and records of a bank, as defined in Section 63010, shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the custodian of the information:

(1) A commercial or personal financial statement or other financial or project data received from an actual or potential applicant to the bank, loan recipient, or investment recipient.

(2) A record containing information regarding a specific financial assistance, bond or loan amount or term, or information received from an applicant or customer pertaining to a contract for financial assistance, bond or loan or an application related thereto, including an investment agreement, loan agreement, or a related document.

(3) Due diligence materials, or information related to customers, and competitors, including summaries, reports, analyses, recommendations, projections, or estimates related thereto.

(4) Any record containing information claimed to be a trade secret, confidential or proprietary, or to be otherwise exempt from disclosure under this chapter, or under other applicable provisions of law as identified in writing by the information provider.

(b) This section shall apply to the bank solely in relation to the administration of the Climate Catalyst Revolving Loan Fund Act of 2020 (Article 6.7 (commencing with Section 63048.91) of Chapter 2 of Division 1 of Title 6.7), the Venture Capital Program pursuant to Section 63089.99, and the financing of economic development facilities and public development facilities, but only when a participating party is seeking financial assistance with the support of a sponsor, as those terms are defined in Section 63010.

(c) This section shall does not exempt disclosure of bank-produced documents or materials, including staff reports and terms sheets, that are presented to the bank's board of directors for consideration and approval, even if such documents or materials are produced from original information and documents that are otherwise exempted under this section. Any further information or document requested by the bank's board of directors in connection with these bank-produced documents or materials this is provided during, or prior to, the bank

board meeting, are also not exempt from disclosure and shall be publicly available in the form provided to the board.

(d) This section shall only apply to documents and information provided to the bank on and after August 1, 2022, and prior to July 1, 2025, and shall continue to apply to those documents and information going forward.

CHAPTER 17. Security Measures and Related Matters

7929.200. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of a document prepared by or for a state or local agency that satisfies both of the following conditions:

(a) It assesses the agency's vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operation.

(b) It is for distribution or consideration in a closed session.

7929.205. (a) As used in this section, "voluntarily submitted" means submitted without the Office of Emergency Services exercising any legal authority to compel access to, or submission of, critical infrastructure information.

(b) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who, or entity that, voluntarily submitted the information.

(c) This section does not affect the status of information in the possession of any other state or local governmental agency.

7929.210. (a) Nothing in this division requires the disclosure of an information security record of a public agency, if, on the facts of the particular case, disclosure of that record would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of a public agency.

(b) Nothing in this section limits public disclosure of records stored within an information technology system of a public agency that are not otherwise exempt from disclosure pursuant to this division or any other law.

7929.215. Nothing in this division or any other law requires disclosure of a risk assessment or railroad infrastructure protection program filed with the Public Utilities Commission, the Director of Homeland Security, and the Office of Emergency Services pursuant to Article 7.3 (commencing with Section 7665) of Chapter 1 of Division 4 of the Public Utilities Code.

CHAPTER 18. State Compensation Insurance Fund

7929.400. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund that relate to claims pursuant to Chapter 1 (commencing with Section 3200) of Part 1 of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

7929.405. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund that relate to discussions, communications, or any other portion of negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

7929.410. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund that relate to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

7929.415. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, all of the following:

(a) Any medical claims information.

(b) Policyholder information, provided that this section shall not be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker.

(c) Information on rates, pricing, and claims handling received from brokers.

7929.420. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund that are trade secrets pursuant to Section 7930.205, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including, without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and

informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(b) Notwithstanding subdivision (a), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

7929.425. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of internal audits of the State Compensation Insurance Fund containing proprietary information, or the following records of the State Compensation Insurance Fund that are related to an internal audit:

(1) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that the person's papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(2) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(b) Notwithstanding subdivision (a), the portions of records containing proprietary information, or any information specified in subdivision (a), shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

7929.430. (a) For purposes of this section, "fully executed" means the point in time when all of the necessary parties to a contract have signed the contract.

(b) Except as provided in subdivision (d), records of the State Compensation Insurance Fund that are contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(c) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(d) Three years after a contract or amendment is open to inspection pursuant to this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(e) Notwithstanding any other law, the entire contract or amendment to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contract or amendment thereto until the contract or amendment is open to inspection pursuant to this section.

(f) This section does not apply to a document related to a contract with a public entity that is not otherwise expressly confidential as to that public entity.

CHAPTER 19. Test Materials, Test Results, and Related Matters

7929.600. Nothing in this division requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

7929.605. Except as provided in Sections 7924.510, 7924.700, and 7929.610, and in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code, this division does not require disclosure of test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination.

7929.610. (a) Notwithstanding the provisions listed in Section 7920.505, upon the request of any Member of the Legislature or upon request of the Governor or the Governor's designee, test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program of pupils enrolled in the public schools shall be disclosed to the requester.

(b) The questions or materials described in subdivision (a) may not include an individual examination that has been administered to a pupil and scored.

(c) The requester may not take physical possession of the questions or materials described in subdivision (a), but may view the questions or materials at a location selected by the department.

(d) Upon viewing this information, the requester shall keep the materials that the requester has seen confidential.

PART 6. OTHER EXEMPTIONS FROM DISCLOSURE

CHAPTER 1. Introductory Provisions

7930.000. (a) It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to Section 7927.705 shall be listed and described in Chapter 2 (commencing with Section 7930.100) pursuant to a bill authorized by a standing committee of the Legislature to be introduced during the first year of each session of the Legislature.

(b) The statutes and constitutional provisions listed in Chapter 2 (commencing with Section 7930.100) may operate to exempt certain records, or portions thereof, from disclosure. The statutes and constitutional provisions listed and described may not be inclusive of all exemptions. The listing of a statute or constitutional provision in Chapter 2 (commencing with Section 7930.100) does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute or constitutional provision to determine the extent to which it, in light of the circumstances surrounding the request, exempts public records from disclosure.

7930.005. Records or information not required to be disclosed pursuant to Section 7927.705 may include, but shall not be limited to, records or information identified in statutes listed in Chapter 2 (commencing with Section 7930.100).

CHAPTER 2. Alphabetical List

7930.100. The following constitutional provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Crime victims, confidential information or records, The Victims' Bill of Rights Act of 2008: Marsy's Law, Section 28 of Article I of the California Constitution.

Privacy, inalienable right, Section 1 of Article I of the California Constitution.

7930.105. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Acquired immunodeficiency syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired immunodeficiency syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired immunodeficiency syndrome, confidentiality of personal data of patients in State Department of Public Health programs, Section 120820, Health and Safety Code.

Acquired immunodeficiency syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired immunodeficiency syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired immunodeficiency syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired immunodeficiency syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired immunodeficiency syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired immunodeficiency syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired immunodeficiency syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired immunodeficiency syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired immunodeficiency syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, financial audits or program evaluations, Section 121085, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, violations, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, personally identifying research records not to be disclosed, Section 121075, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, permittee disclosure, Section 121080, Health and Safety Code.

Administrative procedure, adjudicatory hearings, interpreters, Section 11513, this code.

Adoption records, confidentiality of, Section 102730, Health and Safety Code.

Advance Health Care Directive Registry, exemption from disclosure for registration information provided to the Secretary of State, Section 7926.100, this code.

7930.110. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Aeronautics Act, reports of investigations and hearings, Section 21693, Public Utilities Code.

Agricultural producers marketing, access to records, Section 59616, Food and Agricultural Code.

Aiding disabled voters, Section 14282, Elections Code.

Air pollution data, confidentiality of trade secrets, Sections 7924.510 and 7924.700, this code, and Sections 42303.2 and 43206, Health and Safety Code.

Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code.

Alcohol and drug abuse records and records of communicable diseases, confidentiality of, Section 123125, Health and Safety Code.

Alcoholic beverage licensees, confidentiality of corporate proprietary information, Section 25205, Business and Professions Code.

Ambulatory Surgery Data Record, confidentiality of identifying information, Section 128737, Health and Safety Code.

Apiary registration information, confidentiality of, Section 29041, Food and Agricultural Code.

Archaeological site information and reports maintained by state and local agencies, disclosure not required, Section 7927.005, this code.

Arrest not resulting in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Assessor's records, confidentiality of information in, Section 408, Revenue and Taxation Code.

Assessor's records, confidentiality of information in, Section 451, Revenue and Taxation Code.

Assessor's records, display of documents relating to business affairs or property of another, Section 408.2, Revenue and Taxation Code.

Assigned risk plans, rejected applicants, confidentiality of information, Section 11624, Insurance Code.

Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2, Business and Professions Code.

Attorney applicant, information submitted by applicant and State Bar admission records, confidentiality of, Section 6060.25, Business and Professions Code.

Attorney-client confidential communication, Section 6068, Business and Professions Code, and Sections 952 and 954, Evidence Code.

Attorney, disciplinary proceedings, confidentiality before formal proceedings, Section 6086.1, Business and Professions Code.

Attorney, disciplinary proceeding, State Bar access to nonpublic court records, Section 6090.6, Business and Professions Code.

Attorney, law corporation, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney work product confidentiality in administrative adjudication, Section 11507.6, this code.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4, Code of Civil Procedure.

Automated forward facing parking control devices, confidentiality of video imaging records from the devices, Section 40240, Vehicle Code.

Automated traffic enforcement system, confidentiality of photographic records made by the system, Section 21455.5, Vehicle Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Avocado handler transaction records, confidentiality of information, Section 44984, Food and Agricultural Code.

7930.115. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Bank and Corporation Tax, disclosure of information, Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2, Revenue and Taxation Code.

Bank employees, confidentiality of criminal history information, Section 4990, Financial Code.

Bank reports, confidentiality of, Section 459, Financial Code.

Basic Property Insurance Inspection and Placement Plan, confidential reports, Section 10097, Insurance Code.

Beef Council of California, confidentiality of fee transactions information, Section 64691.1, Food and Agricultural Code.

Bids, confidentiality of, Section 10304, Public Contract Code.

Birth, death, and marriage licenses, confidential information contained in, Sections 102100, 102110, and 102230, Health and Safety Code.

Birth defects, monitoring, confidentiality of information collected, Section 103850, Health and Safety Code.

Birth, live, confidential portion of certificate, Sections 102430, 102475, 103525, and 103590, Health and Safety Code.

Blood tests, confidentiality of hepatitis and AIDS carriers, Section 1603.1, Health and Safety Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

Business and professions licensee exemption for social security number, Section 30, Business and Professions Code.

7930.120. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Cable television subscriber information, confidentiality of, Section 637.5, Penal Code.

CalFresh, disclosure of information, Section 18909, Welfare and Institutions Code.

California AIDS Program, personal data, confidentiality, Section 120820, Health and Safety Code.

California Apple Commission, confidentiality of lists of persons, Section 75598, Food and Agricultural Code.

California Apple Commission, confidentiality of proprietary information from producers or handlers, Section 75633, Food and Agricultural Code.

California Asparagus Commission, confidentiality of lists of producers, Section 78262, Food and Agricultural Code.

California Asparagus Commission, confidentiality of proprietary information from producers, Section 78288, Food and Agricultural Code.

California Avocado Commission, confidentiality of information from handlers, Section 67094, Food and Agricultural Code.

California Avocado Commission, confidentiality of proprietary information from handlers, Section 67104, Food and Agricultural Code.

California Cherry Commission, confidentiality of proprietary information from producers, processors, shippers, or grower-handlers, Section 76144, Food and Agricultural Code.

California Children's Services Program, confidentiality of factor replacement therapy contracts, Section 123853, Health and Safety Code.

California Cut Flower Commission, confidentiality of lists of producers, Section 77963, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of proprietary information from producers, Section 77988, Food and Agricultural Code.

California Date Commission, confidentiality of proprietary information from producers and grower-handlers, Section 77843, Food and Agricultural Code.

California Egg Commission, confidentiality of proprietary information from handlers or distributors, Section 75134, Food and Agricultural Code.

California Forest Products Commission, confidentiality of lists of persons, Section 77589, Food and Agricultural Code.

California Forest Products Commission, confidentiality of proprietary information from producers, Section 77624, Food and Agricultural Code.

California Iceberg Lettuce Commission, confidentiality of information from handlers, Section 66624, Food and Agricultural Code.

California Kiwifruit Commission, confidentiality of proprietary information from producers or handlers, Section 68104, Food and Agricultural Code.

California Navel Orange Commission, confidentiality of proprietary information from producers or handlers and lists of producers and handlers, Section 73257, Food and Agricultural Code.

California Pepper Commission, confidentiality of lists of producers and handlers, Section 77298, Food and Agricultural Code.

California Pepper Commission, confidentiality of proprietary information from producers or handlers, Section 77334, Food and Agricultural Code.

California Pistachio Commission, confidentiality of proprietary information from producers or processors, Section 69045, Food and Agricultural Code.

California Salmon Council, confidentiality of fee transactions records, Section 76901.5 of the Food and Agricultural Code.

California Salmon Council, confidentiality of request for list of commercial salmon vessel operators, Section 76950 of the Food and Agricultural Code.

California Seafood Council, confidentiality of fee transaction records, Section 78553, Food and Agricultural Code.

California Seafood Council, confidentiality of information on volume of fish landed, Section 78575, Food and Agricultural Code.

California Sheep Commission, confidentiality of proprietary information from producers or handlers and lists of producers, Section 76343, Food and Agricultural Code.

California State University contract law, bids, questionnaires, and financial statements, Section 10763, Public Contract Code.

California State University Investigation of Reported Improper Governmental Activities Act, confidentiality of investigative audits completed pursuant to the act, Section 89574, Education Code.

California Table Grape Commission, confidentiality of information from shippers, Section 65603, Food and Agricultural Code.

California Tomato Commission, confidentiality of lists of producers, handlers, and others, Section 78679, Food and Agricultural Code.

California Tomato Commission, confidentiality of proprietary information, Section 78704, Food and Agricultural Code.

California Tourism Marketing Act, confidentiality of information pertaining to businesses paying the assessment under the act, Section 13995.54, this code.

California Victim Compensation Board, disclosure not required of records relating to assistance requests under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2 of this code, Section 7923.755, this code.

California Walnut Commission, confidentiality of lists of producers, Section 77101, Food and Agricultural Code.

California Walnut Commission, confidentiality of proprietary information from producers or handlers, Section 77154, Food and Agricultural Code.

California Wheat Commission, confidentiality of proprietary information from handlers and lists of producers, Section 72104, Food and Agricultural Code.

California Wheat Commission, confidentiality of requests for assessment refund, Section 72109, Food and Agricultural Code.

California Wine Commission, confidentiality of proprietary information from producers or vintners, Section 74655, Food and Agricultural Code.

California Winegrape Growers Commission, confidentiality of proprietary information from producers and vintners, Section 74955, Food and Agricultural Code.

7930.125. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Cancer registries, confidentiality of information, Section 103885, Health and Safety Code.

Candidate for local nonpartisan elective office, confidentiality of ballot statement, Section 13311, Elections Code.

Child abuse information, exchange by multidisciplinary personnel teams, Section 830, Welfare and Institutions Code.

Child abuse report and those making report, confidentiality of, Sections 11167 and 11167.5, Penal Code.

Child care liability insurance, confidentiality of information, Section 1864, Insurance Code.

Child concealer, confidentiality of address, Section 278.7, Penal Code.

Child custody investigation report, confidentiality of, Section 3111, Family Code.

Child day care facility, nondisclosure of complaint, Section 1596.853, Health and Safety Code.

Child health and disability prevention, confidentiality of health screening and evaluation results, Section 124110, Health and Safety Code.

Child sexual abuse reports, confidentiality of reports filed in a contested proceeding involving child custody or visitation rights, Section 3118, Family Code.

Child support, confidentiality of income tax return, Section 3552, Family Code.

Child support, promise to pay, confidentiality of, Section 7614, Family Code.

Childhood lead poisoning prevention, confidentiality of blood lead findings, Section 124130, Health and Safety Code.

Children and families commission, local, confidentiality of individually identifiable information, Section 130140.1, Health and Safety Code.

Cigarette tax, confidential information, Section 30455, Revenue and Taxation Code.

Civil actions, delayed disclosure for 30 days after complaint filed, Section 482.050, Code of Civil Procedure.

Closed sessions, document assessing vulnerability of state or local agency to disruption by terrorist or other criminal acts, Section 7929.200, this code.

Closed sessions, meetings of local governments, pending litigation, Section 54956.9, this code.

Colorado River Board, confidential information and records, Section 12519, Water Code.

Commercial fishing licensee, confidentiality of records, Section 7923, Fish and Game Code.

Commercial fishing reports, Section 8022, Fish and Game Code.

Community care facilities, confidentiality of client information, Section 1557.5, Health and Safety Code.

Community college employee, candidate examination records, confidentiality of, Section 88093, Education Code.

Community college employee, notice and reasons for non-reemployment, confidentiality, Section 87740, Education Code.

7930.130. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Conservatee, confidentiality of the conservatee's report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator's birthdate and driver's license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509, this code.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Controlled Substance Law violations, confidential information, Section 818.7, this code.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Section 54453, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Section 27491.8, this code.

County aid and relief to indigents, confidentiality of investigation, supervision, relief, and rehabilitation records, Section 17006, Welfare and Institutions Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees' Retirement, confidential statements and records, Section 31532, this code.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

County special commissions, disclosure of health care peer review and quality assessment records not required, Section 14087.58, Welfare and Institutions Code.

County special commissions, disclosure of records relating to the commission's rates of payment for publicly assisted medical care not required, Section 14087.58, Welfare and Institutions Code.

Court files, access to, restricted for 60 days, Section 1161.2, Code of Civil Procedure.

Court files, access to, restricted for 60 days, Section 1708.85, Civil Code.

Court reporters, confidentiality of records and reporters, Section 68525, this code.

Court-appointed special advocates, confidentiality of information acquired or reviewed, Section 105, Welfare and Institutions Code.

Crane employers, previous business identities, confidentiality of, Section 7383, Labor Code.

Credit unions, confidentiality of investigation and examination reports, Section 14257, Financial Code.

Credit unions, confidentiality of employee criminal history information, Section 14409.2, Financial Code.

Criminal defendant, indigent, confidentiality of request for funds for investigators and experts, Section 987.9, Penal Code.

Criminal offender record information, access to, Sections 11076 and 13202, Penal Code.

Crop reports, confidential, Section 7927.300, this code.

Customer list of chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, the quantities and dates of shipments, and the proportion of a specified chemical within a mixture, confidential, Section 147.2, Labor Code.

Customer list of employment agency, trade secret, Section 16607, Business and Professions Code.

Customer list of telephone answering service, trade secret, Section 16606, Business and Professions Code.

7930.135. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Dairy Council of California, confidentiality of ballots, Section 64323, Food and Agricultural Code.

Death, report that physician's or podiatrist's negligence or incompetence may be cause, confidentiality of, Section 802.5, Business and Professions Code.

Dental hygienist drug and alcohol diversion program, confidentiality of records pertaining to treatment, Section 1966.5, Business and Professions Code.

Dentist advertising and referral contract exemption, Section 650.2, Business and Professions Code.

Dentist, alcohol or dangerous drug rehabilitation and diversion, confidentiality of records, Section 1698, Business and Professions Code.

Department of Consumer Affairs licensee exemption for alcohol or dangerous drug treatment and rehabilitation records, Section 156.1, Business and Professions Code.

Department of Human Resources, confidentiality of pay data furnished to, Section 19826.5, this code.

Department of Motor Vehicles, confidentiality of information provided by an insurer, Section 4750.4, Vehicle Code.

Department of Motor Vehicles, confidentiality of the home address of specified persons in the records of the Department of Motor Vehicles, Section 1808.6, Vehicle Code.

Developmentally disabled conservatee, confidentiality of reports and records, Sections 416.8 and 416.18, Health and Safety Code.

Developmentally disabled person, access to information provided by family member, Section 4727, Welfare and Institutions Code.

Developmentally disabled person and person with mental illness, access to and release of information about, by protection and advocacy agency, Section 4903, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of patient records, state agencies, Section 4552.5, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of records and information, Sections 4514 and 4518, Welfare and Institutions Code.

Diesel Fuel Tax information, disclosure prohibited, Section 60609, Revenue and Taxation Code.

Disability compensation, confidential medical records, Section 2714, Unemployment Insurance Code.

Disability insurance, access to registered information, Section 789.7, Insurance Code.

Discrimination complaint to Division of Labor Standards Enforcement, confidentiality of witnesses, Section 98.7, Labor Code.

Dispute resolution participants confidentiality, Section 471.5, Business and Professions Code.

Division of Medi-Cal Fraud and Elder Abuse, confidentiality of complaints, Section 12528, this code.

Division of Workers' Compensation, confidentiality of data obtained by the administrative director and derivative works created by the division, Sections 3201.5, 3201.7, and 3201.9, Labor Code.

Division of Workers' Compensation, individually identifiable information and residence addresses obtained or maintained by the division on workers' compensation claims, confidentiality of, Section 138.7, Labor Code.

Division of Workers' Compensation, individually identifiable information of health care organization patients, confidentiality of, Section 4600.5, Labor Code.

Division of Workers' Compensation, individual workers' compensation claim files and auditor's working papers, confidentiality of, Section 129, Labor Code.

Division of Workers' Compensation, peer review proceedings and employee medical records, confidentiality of, Section 4600.6, Labor Code.

Domestic violence counselor and victim, confidentiality of communication, Sections 1037.2 and 1037.5, Evidence Code.

Driver arrested for traffic violation, notice of reexamination for evidence of incapacity, confidentiality of, Section 40313, Vehicle Code.

Driving school and driving instructor licensee records, confidentiality of, Section 11108, Vehicle Code.

7930.140. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Educational psychologist-patient, privileged communication, Section 1010.5, Evidence Code.

Electronic and appliance repair dealer, service contractor, financial data in applications, Section 7925.010, this code.

Electronic Recording Delivery Act of 2004, exemption from disclosure for computer security reports, Section 27394, this code.

Emergency Care Data Record, exemption from disclosure for identifying information, Section 128736, Health and Safety Code.

Emergency Medical Services Fund, patient named, Section 1797.98c, Health and Safety Code.

Emergency medical technicians, confidentiality of disciplinary investigation information, Section 1798.200, Health and Safety Code.

Emergency Medical Technician-Paramedic (EMT-P), exemption from disclosure for records relating to personnel actions against, or resignation of, an EMT-P for disciplinary cause or reason, Section 1799.112, Health and Safety Code.

Eminent domain proceedings, use of state tax returns, Section 1263.520, Code of Civil Procedure.

Employment agency, confidentiality of customer list, Section 16607, Business and Professions Code.

Employment application, nondisclosure of arrest record or certain convictions, Sections 432.7 and 432.8, Labor Code.

Employment Development Department, furnishing materials, Section 307, Unemployment Insurance Code.

Enteral nutrition products, confidentiality of contracts by the State Department of Health Care Services with manufacturers of enteral nutrition products, Section 14105.8, Welfare and Institutions Code.

Equal wage rate violation, confidentiality of complaint, Section 1197.5, Labor Code.

Equalization, State Board of, prohibition against divulging information, Section 15619, this code.

Escrow Agents' Fidelity Corporation, confidentiality of examination and investigation reports, Section 17336, Financial Code.

Escrow agents' confidentiality of reports on violations, Section 17414, Financial Code.

Escrow agents' confidentiality of state summary criminal history information, Section 17414.1, Financial Code.

Estate tax, confidential records and information, Section 14251, Revenue and Taxation Code.

Excessive rates or complaints, reports, Section 1857.9, Insurance Code.

Executive Department, closed sessions and the record of topics discussed, Sections 11126 and 11126.1, this code.

Executive Department, investigations and hearings, confidential nature of information acquired, Section 11183, this code.

7930.145. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Family court records, Section 1818, Family Code.

Farm product processor license, confidentiality of financial statements, Section 55523.6, Food and Agricultural Code.

Farm product processor licensee, confidentiality of grape purchases, Section 55601.5, Food and Agricultural Code.

Fee payer information, prohibition against disclosure by the State Board of Equalization and others, Section 55381, Revenue and Taxation Code.

Financial institutions, issuance of securities, reports and records of state agencies, Section 7929.000, this code.

Financial statements of insurers, confidentiality of information received, Section 925.3, Insurance Code.

Financial statements and questionnaires, of prospective bidders for the state, confidentiality of, Section 10165, Public Contract Code.

Financial statements and questionnaires, of prospective bidders for California State University contracts, confidentiality of, Section 10763, Public Contract Code.

Firearms, centralized list of exempted federal firearms licensees, disclosure of information compiled from, Sections 28475 and 28480, Penal Code.

Firearms, centralized list of dealers and licensees, disclosure of information compiled from, Section 26715, Penal Code.

Firearm license applications, Sections 7923.800 and 7923.805, this code.

Firearm sale or transfer, confidentiality of records, Section 28060, Penal Code.

Fishing and hunting licenses, confidentiality of names and addresses contained in records submitted to the Department of Fish and Wildlife to obtain recreational fishing and hunting licenses, Section 1050.6, Fish and Game Code.

Foreign marketing of agricultural products, confidentiality of financial information, Section 58577, Food and Agricultural Code.

Forest fires, anonymity of informants, Section 4417, Public Resources Code.

Foster homes, identifying information, Section 1536, Health and Safety Code.

Franchise Tax Board, access to Franchise Tax Board information by the State Department of Social Services, Section 11025, Welfare and Institutions Code.

Franchise Tax Board, auditing, confidentiality of, Section 90005, this code.

Franchises, applications, and reports filed with Commissioner of Business Oversight, disclosure and withholding from public inspection, Section 31504, Corporations Code.

7930.150. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Gambling Control Act, exemption from disclosure for records of the California Gambling Control Commission and the Department of Justice, Sections 19819 and 19821, Business and Professions Code.

Genetically Handicapped Persons Program, confidentiality of factor replacement therapy contracts, Section 125191, Health and Safety Code.

Governor, correspondence of and to Governor and Governor's office, Section 7928.000, this code.

Governor, transfer of public records in control of, restrictions on public access, Sections 7928.005 and 7928.010, this code.

Grand jury, confidentiality of request for special counsel, Section 936.7, Penal Code.

Grand jury, confidentiality of transcription of indictment or accusation, Section 938.1, Penal Code.

Group Insurance, public employees, Section 53202.25, this code.

Guardianship, confidentiality of report regarding the suitability of the proposed guardian, Section 1543, Probate Code.

Guardianship, disclosure of report and recommendation concerning proposed guardianship of person or estate, Section 1513, Probate Code.

7930.155. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25509, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25512, 25512.1, and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, Section 25358.2, Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste recycling, information clearinghouse, confidentiality of trade secrets, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health authorities, special county, confidentiality of records, Sections 14087.35, 14087.36, and 14087.38, Welfare and Institutions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

Health commissions, special county, confidentiality of peer review proceedings, rates of payment, and trade secrets, Section 14087.31, Welfare and Institutions Code.

Health facilities, patient's rights of confidentiality, subdivision (c) of Section 128745 and Sections 128735, 128736, 128737, 128755, and 128765, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Section 127780, Health and Safety Code.

Health plan governed by a county board of supervisors, exemption from disclosure for records relating to provider rates or payments for a three-year period after execution of the provider contract, Sections 7926.205 and 54956.87, this code.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, Section 7926.210, this code.

Hospital final accreditation report, Section 7926.000, this code.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

7930.160. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Improper governmental activities reporting, confidentiality of identity of person providing information, Section 8547.5, this code.

Improper governmental activities reporting, disclosure of information, Section 8547.6, this code.

Industrial loan companies, confidentiality of financial information, Section 18496, Financial Code.

Industrial loan companies, confidentiality of investigation and examination reports, Section 18394, Financial Code.

Influenza vaccine, trade secret information and information relating to recipient of vaccine, Section 120160, Health and Safety Code.

In forma pauperis litigant, rules governing confidentiality of financial information, Section 68633, this code.

Infrastructure information, exemption from disclosure for information voluntarily submitted to the Office of Emergency Services, Section 7929.205, this code.

In-Home Supportive Services Program, exemption from disclosure for information regarding persons paid by the state to provide in-home supportive services, Section 7926.300, this code.

Initiative, referendum, recall, and other petitions, confidentiality of names of signers, Sections 7924.100, 7924.105, and 7924.110, this code.

Insurance claims analysis, confidentiality of information, Section 1875.16, Insurance Code.

Insurance Commissioner, confidential information, Sections 735.5, 1067.11, 1077.3, and 12919, Insurance Code.

Insurance Commissioner, informal conciliation of complaints, confidential communications, Section 1858.02, Insurance Code.

Insurance Commissioner, information from examination or investigation, confidentiality of, Sections 1215.8, 1433, and 1759.3, Insurance Code.

Insurance Commissioner, writings filed with nondisclosure, Section 855, Insurance Code.

Insurance fraud reporting, information acquired not part of public record, Section 1873.1, Insurance Code.

Insurance licensee, confidential information, Section 1666.5, Insurance Code.

Insurer application information, confidentiality of, Section 925.3, Insurance Code.

Insurer financial analysis ratios and examination synopses, confidentiality of, Section 933, Insurance Code.

Department of Resources Recycling and Recovery information, prohibition against disclosure, Section 45982, Revenue and Taxation Code.

International wills, confidentiality of registration information filed with the Secretary of State, Section 6389, Probate Code.

Intervention in regulatory and ratemaking proceedings, audit of customer seeking and award, Section 1804, Public Utilities Code.

Investigation and security records, exemption from disclosure for records of the Attorney General, the Department of Justice, the Office of Emergency Services, and state and local police agencies, Sections 7923.600 to 7923.630, inclusive, this code.

Investigative consumer reporting agency, limitations on furnishing an investigative consumer report, Section 1786.12, Civil Code.

7930.165. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Joint Legislative Ethics Committee, confidentiality of reports and records, Section 8953, this code.

Judicial candidates, confidentiality of communications concerning, Section 12011.5, this code.

Judicial proceedings, confidentiality of employer records of employee absences, Section 230.2, Labor Code.

Jurors' lists, lists of registered voters and licensed drivers as source for, Section 197, Code of Civil Procedure.

Juvenile court proceedings to adjudge a person a dependent child of court, sealing records of, Section 389, Welfare and Institutions Code.

Juvenile criminal records, dissemination to schools, Section 828.1, Welfare and Institutions Code.

Juvenile delinquents, notification of chief of police or sheriff of escape of minor from secure detention facility, Section 1155, Welfare and Institutions Code.

Labor dispute, investigation and mediation records, confidentiality of, Section 3601, this code.

Lanterman-Petris-Short Act, mental health services recipients, confidentiality of information and records, mental health advocate, Sections 5540, 5541, 5542, and 5550, Welfare and Institutions Code.

Law enforcement vehicles, registration disclosure, Section 5003, Vehicle Code.

Legislative Counsel records, Section 7928.100, this code.

Library circulation records and other materials, Sections 7925.000 and 7927.105, this code.

Life and disability insurers, actuarial information, confidentiality of, Section 10489.15, Insurance Code.

Litigation, confidentiality of settlement information, Section 68513, this code.

Local agency legislative body, closed sessions, disclosure of materials, Section 54956.9, this code.

Local government employees, confidentiality of records and claims relating to group insurance, Section 53202.25, this code.

Local summary criminal history information, confidentiality of, Sections 13300 and 13305, Penal Code.

Local agency legislative body, closed session, nondisclosure of minute book, Section 54957.2, this code.

Local agency legislative body, meeting, disclosure of agenda, Section 54957.5, this code.

Long-term health facilities, confidentiality of complaints against, Section 1419, Health and Safety Code.

Long-term health facilities, confidentiality of records retained by State Department of Public Health, Section 1439, Health and Safety Code.

Los Angeles County Tourism Marketing Commission, confidentiality of information obtained from businesses to determine their assessment, Section 13995.108, this code.

7930.170. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Managed Risk Medical Insurance Board, negotiations with entities contracting or seeking to contract with the board, Sections 7926.225 and 7926.230, this code.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Sections 1603.1, 1603.3, and 121022, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015, Health and Safety Code.

Manufactured home, mobilehome, floating home, confidentiality of home address of registered owner, Section 18081, Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987, Evidence Code.

Market reports, confidential, Section 7927.300, this code.

Marketing of commodities, confidentiality of financial information, Section 58781, Food and Agricultural Code.

Marketing orders, confidentiality of processors' or distributors' information, Section 59202, Food and Agricultural Code.

Marriage, confidential, certificate, Section 511, Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2, Welfare and Institutions Code.

Medi-Cal Benefits Program, request of department for records or information, Section 14124.89, Welfare and Institutions Code.

Medi-Cal managed care program, exemption from disclosure for financial and utilization data submitted by Medi-Cal managed care health plans to establish rates, Section 14301.1, Welfare and Institutions Code.

Medi-Cal program, exemption from disclosure for best price contracts between the State Department of Health Care Services and drug manufacturers, Section 14105.33, Welfare and Institutions Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16, Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30, Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157, Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828, Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5, Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1, this code.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620, Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.15, 5328.2, 5328.4, 5328.8, and 5328.9, Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443, Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121, Food and Agricultural Code.

Milk, market milk, confidential records and reports, Section 62243, Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946, Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716, Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207, Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1, Penal Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5, Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5, Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167, Penal Code.

Missing persons' information, disclosure of, Sections 14204 and 14205, Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330, Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014, Vehicle Code.

Motor Vehicles, Department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3, Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628, Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8, this code.

7930.175. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Narcotic and drug abuse patients, confidentiality of records, Section 11845.5, Health and Safety Code.

Native American graves, cemeteries, and sacred places, records of, Section 7927.000, this code.

Notary public, confidentiality of application for appointment and commission, Section 8201.5, this code.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

7930.180. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Parole revocation proceedings, confidentiality of information in reports, Section 3063.5, Penal Code.

Passenger fishing boat licenses, records, Section 7923, Fish and Game Code.

Paternity, acknowledgment, confidentiality of records, Section 102760, Health and Safety Code.

Patient-physician confidential communication, Sections 992 and 994, Evidence Code.

Patient records, confidentiality of, Section 123135, Health and Safety Code.

Payroll records, confidentiality of, Section 1776, Labor Code.

Peace officer personnel records, confidentiality of, Sections 832.7 and 832.8, Penal Code.

Penitential communication between penitent and clergy, Sections 1032 and 1033, Evidence Code.

Personal Care Services Program, exemption from disclosure for information regarding persons paid by the state to provide personal care services, Section 7926.300, this code.

Personal Income Tax, disclosure of information, Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2, Revenue and Taxation Code.

Personal information, Information Practices Act, prohibitions against disclosure by state agencies, Sections 1798.24 and 1798.75, Civil Code.

Personal information, subpoena of records containing, Section 1985.4, Code of Civil Procedure.

Personal representative, confidentiality of personal representative's birthdate and driver's license number, Section 8404, Probate Code.

Persons formerly classified as mentally abnormal sex offenders committed to a state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Persons with mental health disorders, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Persons with mental health disorders, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Persons with mental health disorders voluntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.15, 5328.2, 5328.4, 5328.8, and 5328.9, Welfare and Institutions Code.

Persons with mental health disorders, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Petition signatures, Section 18650, Elections Code.

Petroleum supply and pricing, confidential information, Sections 25364 and 25366, Public Resources Code.

Pharmacist, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 4372, Business and Professions Code.

Physical therapist or assistant, records of dangerous drug or alcohol diversion and rehabilitation, confidentiality of, Section 2667, Business and Professions Code.

Physical or mental condition or conviction of controlled substance offense, records in Department of Motor Vehicles, confidentiality of, Section 1808.5, Vehicle Code.

Physician assistant, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 3534.7, Business and Professions Code.

Physician competency examination, confidentiality of reports, Section 2294, Business and Professions Code.

Physicians and surgeons, confidentiality of reports of patients with a lapse of consciousness disorder, Section 103900, Health and Safety Code.

Physician Services Account, confidentiality of patient names in claims, Section 16956, Welfare and Institutions Code.

Pilots, confidentiality of personal information, Section 1157.1, Harbors and Navigation Code.

Pollution Control Financing Authority, financial data submitted to, Section 7924.505, this code.

Postmortem or autopsy photos, Section 129, Code of Civil Procedure.

7930.185. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Pregnancy tests by local public health agencies, confidentiality of, Section 123380, Health and Safety Code.

Pregnant women, confidentiality of blood tests, Section 125105, Health and Safety Code.

Prehospital emergency medical care, release of information, Sections 1797.188 and 1797.189, Health and Safety Code.

Prenatal syphilis tests, confidentiality of, Section 120705, Health and Safety Code.

Prescription drug discounts, confidentiality of corporate proprietary information, Section 130506, Health and Safety Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

Prisoners, transfer from county facility for mental treatment and evaluation, confidentiality of written reasons, Section 4011.6, Penal Code.

Private industry wage data collected by public entity, confidentiality of, Section 7927.600, this code.

Private railroad car tax, confidentiality of information, Section 11655, Revenue and Taxation Code.

Probate referee, disclosure of materials, Section 8908, Probate Code.

Probation officer reports, inspection of, Section 1203.05, Penal Code.

Produce dealer, confidentiality of financial statements, Section 56254, Food and Agricultural Code.

Products liability insurers, transmission of information, Section 1857.9, Insurance Code.

Professional corporations, financial statements, confidentiality of, Section 13406, Corporations Code.

Property on loan to museum, notice of intent to preserve an interest in, not subject to disclosure, Section 1899.5, Civil Code.

Property taxation, confidentiality of change of ownership, Section 481, Revenue and Taxation Code.

Property taxation, confidentiality of exemption claims, Sections 63.1, 69.5, and 408.2, Revenue and Taxation Code.

Property taxation, confidentiality of property information, Section 15641, Government Code and Section 833, Revenue and Taxation Code.

Proprietary information, availability only to the director and other persons authorized by the operator and the owner, Section 2778, Public Resources Code.

Psychologist and client, confidential relations and communications, Section 2918, Business and Professions Code.

Psychotherapist-patient confidential communication, Sections 1012 and 1014, Evidence Code.

Public employees' home addresses and telephone numbers, confidentiality of, Section 7928.300, this code.

Public Employees' Medical and Hospital Care Act, confidentiality of data relating to health care services rendered by participating hospitals to members and annuitants, Section 22854.5, this code.

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20230, this code.

Public investment funds, exemption from disclosure for records regarding alternative investments, Section 7928.710, this code.

Public school employees organization, confidentiality of proof of majority support submitted to Public Employment Relations Board, Sections 3544, 3544.1, and 3544.5, this code.

Public social services, confidentiality of digest of decisions, Section 10964, Welfare and Institutions Code.

Public social services, confidentiality of information regarding child abuse or elder or dependent persons abuse, Section 10850.1, Welfare and Institutions Code.

Public social services, confidentiality of information regarding eligibility, Section 10850.2, Welfare and Institutions Code.

Public social services, confidentiality of records, Section 10850, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies, Section 10850.3, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies regarding deceased applicant or recipient, Section 10850.7, Welfare and Institutions Code.

Public utilities, confidentiality of information, Section 583, Public Utilities Code.

Pupil, confidentiality of personal information, Section 45345, Education Code.

Pupil drug and alcohol use questionnaires, confidentiality of, Section 11605, Health and Safety Code.

Pupil, expulsion hearing, disclosure of testimony of witness and closed session of district board, Section 48918, Education Code.

Pupil, personal information disclosed to school counselor, confidentiality of, Section 49602, Education Code.

Pupil record contents, records of administrative hearing to change contents, confidentiality of, Section 49070, Education Code.

Pupil records, access authorized for specified parties, Section 49076, Education Code.

Pupil records, disclosure in hearing to dismiss or suspend school employee, Section 44944.3, Education Code.

Pupil records, release of directory information to private entities, Sections 49073 and 49073.5, Education Code.

7930.190. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Radioactive materials, dissemination of information about transportation of, Section 33002, Vehicle Code.

Railroad infrastructure protection program, disclosure not required for risk assessments filed with the Public Utilities Commission, the Director of Emergency Services, or the Office of Emergency Services, Section 7929.215, this code.

Real estate broker, annual report to Bureau of Real Estate of financial information, confidentiality of, Section 10232.2, Business and Professions Code.

Real property, acquisition by state or local government, information relating to feasibility, Section 7928.705, this code.

Real property, change in ownership statement, confidentiality of, Section 27280, this code.

Records described in Section 1620, Penal Code.

Records of contract purchasers, inspection by public prohibited, Section 85, Military and Veterans Code.

Records of persons committed to a state hospital pursuant to Section 4135, Welfare and Institutions Code.

Registered public obligations, inspection of records of security interests in, Section 5060, this code.

Registration of exempt vehicles, nondisclosure of name of person involved in alleged violation, Section 5003, Vehicle Code.

Rehabilitation, Department of, confidential information, Section 19016, Welfare and Institutions Code.

Reinsurance intermediary-broker license information, confidentiality of, Section 1781.3, Insurance Code.

Relocation assistance, confidential records submitted to a public entity by a business or farm operation, Section 7262, this code.

Rent control ordinance, confidentiality of information concerning accommodations sought to be withdrawn from, Section 7060.4, this code.

Report of probation officer, inspection, copies, Section 1203.05, Penal Code.

Repossession agency licensee application, confidentiality of information, Sections 7503, 7504, and 7506.5, Business and Professions Code.

Reproductive health facilities, disclosure not required for personal information regarding employees, volunteers, board members, owners, partners, officers, and contractors of a reproductive health services facility who have provided requisite notification, Sections 7926.400 to 7926.430, inclusive, this code.

Residence address in any record of Department of Housing and Community Development, confidentiality of, Section 7927.415, this code.

Residence address in any record of Department of Motor Vehicles, confidentiality of, Section 7927.405, this code, and Section 1808.21, Vehicle Code.

Residence and mailing addresses in records of Department of Motor Vehicles, confidentiality of, Section 1810.7, Vehicle Code.

Residential care facilities, confidentiality of resident information, Section 1568.08, Health and Safety Code.

Residential care facilities for the elderly, confidentiality of client information, Section 1569.315, Health and Safety Code.

Resource families, identifying information, Section 16519.55, Welfare and Institutions Code.

Respiratory care practitioner, professional competency examination reports, confidentiality of, Section 3756, Business and Professions Code.

Restraint of trade, civil action by district attorney, confidential memorandum, Section 16750, Business and Professions Code.

Reward by Governor for information leading to arrest and conviction, confidentiality of person supplying information, Section 1547, Penal Code.

7930.195. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Safe surrender site, confidentiality of information pertaining to a parent or individual surrendering a child, Section 1255.7, Health and Safety Code.

Sales and use tax, disclosure of information, Section 7056, Revenue and Taxation Code.

Santa Barbara Regional Health Authority, exemption from disclosure for records maintained by the authority regarding negotiated rates for the California Medical Assistance Program, Section 14499.6, Welfare and Institutions Code.

Savings association employees, disclosure of criminal history information, Section 6525, Financial Code.

Savings associations, inspection of records by shareholders, Section 6050, Financial Code.

School district governing board, disciplinary action, disclosure of pupil information, Section 35146, Education Code.

School employee, merit system examination records, confidentiality of, Section 45274, Education Code.

School employee, notice and reasons for hearing on non-reemployment of employee, confidentiality of, Sections 44948.5 and 44949, Education Code.

School meals for needy pupils, confidentiality of records, Section 49558, Education Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex change, confidentiality of birth certificate, Section 103440, Health and Safety Code.

Sex offenders, registration form, Section 290.021, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Shorthand reporter's complaint, Section 8010, Business and Professions Code.

Small family day care homes, identifying information, Section 1596.86, Health and Safety Code.

Social security number, applicant for driver's license or identification card, nondisclosure of, Section 1653.5, Vehicle Code, and Section 7922.200, this code.

Social security number, official record or official filing, nondisclosure of, Section 9526.5, Commercial Code, and Sections 7922.205 and 7922.210, this code.

Social Security Number Truncation Program, Article 3.5 (commencing with Section 27300) of Chapter 6 of Part 3 of Division 2 of Title 3, this code.

Social security numbers within records of local agencies, nondisclosure of, Section 7922.200, this code.

7930.200. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

State agency activities relating to unrepresented employees, Section 7928.405, this code.

State agency activities relating to providers of health care, Section 7927.500, this code.

State Auditor, access to barred records, Section 8545.2, this code.

State Auditor, confidentiality of records, Sections 8545, 8545.1, and 8545.3, this code.

State civil service employee, confidentiality of appeal to State Personnel Board, Section 18952, this code.

State civil service employees, confidentiality of reports, Section 18573, this code.

State civil service examination, confidentiality of application and examination materials, Section 18934, this code.

State Compensation Insurance Fund, exemption from disclosure for various records maintained by the State Compensation Insurance Fund, Sections 7929.400 to 7929.430, inclusive, this code.

State Contract Act, bids, questionnaires and financial statements, Section 10165, Public Contract Code.

State Contract Act, bids, sealing, opening, and reading bids, Section 10304, Public Contract Code.

State Energy Resources Conservation and Development Commission, confidentiality of proprietary information submitted to, Section 25223, Public Resources Code.

State hospital patients, information and records in possession of Superintendent of Public Instruction, confidentiality of, Section 56863, Education Code.

State Long-Term Care Ombudsman, access to government agency records, Section 9723, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, confidentiality of records and files, Section 9725, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, disclosure of information or communications, Section 9715, Welfare and Institutions Code.

State Lottery Evaluation Report, disclosure, Section 8880.46, this code.

State prisoners, exemption from disclosure for surveys by the California Research Bureau of children of female prisoners, Section 7443, Penal Code.

State summary criminal history information, confidentiality of information, Sections 11105, 11105.1, 11105.3, and 11105.4, Penal Code.

State Teachers' Retirement System, confidentiality of information filed with the system by a member, participant, or beneficiary, Section 22306, Education Code.

Sterilization of disabled, confidentiality of evaluation report, Section 1955, Probate Code.

Strawberry marketing information, confidentiality of, Section 63124, Food and Agricultural Code.

Structural pest control licensee records relating to pesticide use, confidentiality of, Section 15205, Food and Agricultural Code.

Student driver, records of physical or mental condition, confidentiality of, Section 12661, Vehicle Code.

Student, community college, information received by school counselor, confidentiality of, Section 72621, Education Code.

Student, community college, records, limitations on release, Section 76243, Education Code.

Student, community college, record contents, records of administrative hearing to change contents, confidentiality of, Section 76232, Education Code.

Student, sexual assault on private higher education institution campus, confidentiality of information, Section 94385, Education Code.

Student, sexual assault on public college or university, confidentiality of information, Section 67385, Education Code.

Sturgeon egg processors, records, Section 10004, Fish and Game Code.

7930.205. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Taxpayer information, confidentiality, local taxes, Section 7925.000, this code.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tobacco products, exemption from disclosure for distribution information provided to the State Department of Public Health, Section 22954, Business and Professions Code.

Tow truck driver, information in records of the Department of the California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic Substances Control, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of Pesticide Regulation, Sections 7924.300 to 7924.335, inclusive, this code.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 25358.2 and 25358.7, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Tribal-state gaming compacts, exemption from disclosure for records of an Indian tribe relating to securitization of annual payments, Section 63048.63, this code.

Trust companies, disclosure of private trust confidential information, Section 1602, Financial Code.

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000. Superseded on January 1, 2024; see amendment by Stats. 2022, Ch. 258.)

7930.205. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Taxpayer information, confidentiality, local taxes, Section 7925.000, this code.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tobacco products, exemption from disclosure for distribution information provided to the State Department of Public Health, Section 22954, Business and Professions Code.

Tow truck driver, information in records of the Department of the California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic Substances Control, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of Pesticide Regulation, Sections 7924.300 to 7924.335, inclusive, this code.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 78480 to 78495, inclusive, and Section 78930, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Tribal-state gaming compacts, exemption from disclosure for records of an Indian tribe relating to securitization of annual payments, Section 63048.63, this code.

Trust companies, disclosure of private trust confidential information, Section 1602, Financial Code.

(Amended by Stats. 2022, Ch. 258, Sec. 19. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

7930.210. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Unclaimed property, Controller records of, disclosure, Section 1582, Code of Civil Procedure.

Unemployment compensation, disclosure of confidential information, Section 2111, Unemployment Insurance Code.

Unemployment compensation, information obtained in administration of code, Section 1094, Unemployment Insurance Code.

Unemployment fund contributions, publication of annual tax paid, Section 989, Unemployment Insurance Code.

University of California, exemption from disclosure for information submitted by bidders for award of best value contracts, Section 10506.6, Public Contract Code.

Unsafe working condition, confidentiality of complainant, Section 6309, Labor Code.

Use fuel tax information, disclosure prohibited, Section 9255, Revenue and Taxation Code.

Utility systems development, confidential information, Section 7927.300, this code.

Utility user tax return and payment records, exemption from disclosure, Section 7284.6, Revenue and Taxation Code.

Vehicle registration, confidentiality of information, Section 4750.4, Vehicle Code.

Vehicle accident reports, disclosure of, Sections 16005, 20012, and 20014, Vehicle Code and Section 27177, Streets and Highways Code.

Vehicular offense, record of, confidentiality five years after conviction, Section 1807.5, Vehicle Code.

Veterans Affairs, Department of, confidentiality of records of contract purchasers, Section 85, Military and Veterans Code.

Veterinarian or animal health technician, alcohol or dangerous drugs diversion and rehabilitation records, confidentiality of, Section 4871, Business and Professions Code.

Victims' Legal Resource Center, confidentiality of information and records retained, Section 13897.2, Penal Code.

Voter, affidavit or registration, confidentiality of information contained in, Section 7924.000, this code.

Voter, registration by confidential affidavit, Section 2194, Elections Code.

Voting, secrecy, Section 1050, Evidence Code.

7930.215. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Wards and dependent children, inspection of juvenile court documents, Section 827, Welfare and Institutions Code.

Wards, petition for sealing records, Section 781, Welfare and Institutions Code.

Winegrowers of California Commission, confidentiality of producers' or vintners' proprietary information, Sections 74655 and 74955, Food and Agricultural Code.

Workers' Compensation Appeals Board, injury or illness report, confidentiality of, Section 6412, Labor Code.

Workers' compensation insurance, dividend payment to policyholder, confidentiality of information, Section 11739, Insurance Code.

Workers' compensation insurance fraud reporting, confidentiality of information, Section 1877.4, Insurance Code.

Workers' compensation insurer or rating organization, confidentiality of notice of noncompliance, Section 11754, Insurance Code.

Workers' compensation insurer, rating information, confidentiality of, Section 11752.7, Insurance Code.

Workers' compensation, notice to correct noncompliance, Section 11754, Insurance Code.

Workers' compensation, release of information to other governmental agencies, Section 11752.5, Insurance Code.

Workers' compensation, self-insured employers, confidentiality of financial information, Section 3742, Labor Code.

Workplace inspection photographs, confidentiality of, Section 6314, Labor Code.

Youth Authority, parole revocation proceedings, confidentiality of, Section 1767.6, Welfare and Institutions Code.

Youth Authority, release of information in possession of Youth Authority for offenses under Sections 676, 1764.1, and 1764.2, Welfare and Institutions Code.

PART 7. Operative Date

7931.000. This division shall become operative on January 1, 2023.

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APPENDIX C

SUMMARY OF
CONFLICT OF INTEREST LAWS

2023

Conflicts of Interest HANDBOOK

Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

› Updated including changes effective January 1, 2023

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INTRODUCTION

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

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

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

Richards, Watson & Gershon

Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

I. LAWS AND REGULATIONS AFFECTING DECISION-MAKING

A. The Political Reform Act

In 1974, California voters approved Proposition 9, a statewide initiative titled "the Political Reform Act" (the "Act" or the "PRA"). Gov't Code § 81000 *et seq.*[1] At the time, the measure was the most detailed disclosure law in the nation, and it included new requirements for reporting campaign and lobbying activities. Although the Act was initially written before the Watergate scandal broke, by the time Proposition 9 appeared on the ballot, the drama had unfolded, and nationwide reform proposals were being drafted.

The Act passed by an overwhelming majority, and one of its provisions created a new state agency called the Fair Political Practices Commission ("FPPC"). The FPPC was charged with interpreting and enforcing the Act, and pursuant to this authority, the agency drafted a series of regulations. Since the Act went into effect in 1975, the FPPC has issued new regulations and amendments to existing regulations almost every year.

The Act covers numerous topics germane to ethical behavior in public office—financial data reporting obligations, lobbying restrictions, required campaign disclosures, limitations on campaign financing, proscriptions on mass mailings, restrictions on gifts and honoraria, and most significantly, prohibitions on conflicts of interest in the making of governmental decisions. The Act also contains reporting procedures for financial interests and campaign contributions, as well as disqualification requirements when certain financial interests or campaign contribution standards are satisfied.

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

[1] All statutory references are to the California Government Code unless otherwise indicated. Regulations of the FPPC are referred to as "Regulation."

1. Disclosure Requirements Under the Political Reform Act

a. Statements of Economic Interests

The Act requires public officials to disclose assets and income that may be materially affected by their official actions by filing a "Statement of Economic Interests" (also known as a "Form 700"). § 87202; Regulation 18115. The requirement applies to council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. § 87200. If a public official holds multiple positions subject to reporting requirements, the public official may choose to complete a separate Form 700 for each position or a single "Expanded Statement of Economic Interests." Regulation 18723.1.

Officials must file the Form 700 within 30 days after assuming office, and candidates must file no later than the final filing date of a declaration of candidacy. §§ 87201-02. An official must file annually thereafter until he or she leaves office, at which point he or she must file a final statement. §§ 87202-04. The required disclosures on the Form 700 include:

- Investments in business entities (e.g., stock holdings, owning a business, a partnership) that are located or do business in the jurisdiction;
- Interests in real estate (real property) in the jurisdiction, but not including the official's home address;
- Sources of personal income,[2] including gifts, loans, and travel payments;[3] and
- Positions of management or employment with business entities that do business in the jurisdiction.

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

For public officials not covered by the requirements of Section 87203, including employees of state and local government agencies, it is up to the agencies that employ them to decide what their disclosure requirements are. Each state and local agency must adopt a conflicts of interest code tailoring the disclosure requirements for

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

[3] As of January 1, 2016, if an official receives a gift that is a travel payment, advance, or reimbursement valued at $50 or more, the official must also disclose the travel destination. § 87207(a)(4).

each position within the agency to the types of governmental decisions a person holding that position would make. For example, an employee who approves contracts for goods or services purchased by his or her agency would not be required to disclose real estate interests, but would be required to disclose investments in and income from individuals and entities that supply equipment, materials, or services to the agency. §§ 87301-02.

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

A local agency may establish a system for the electronic filing of Form 700s, in accordance with State law. § 87500.2; Regulation 18756. Public officials should seek guidance from the local filing officer as to the appropriate procedure and format for filing a Form 700.

b. Behested Payments

There are also disclosure requirements for certain fundraising activities that elected officials perform for others, including in their capacity as employees or board members of nonprofit organizations. Elected officials who successfully solicit one or more contributions for "legislative, governmental, or charitable purposes" that equal or exceed $5,000 in the aggregate from the same source during a single calendar year must file a report with the official's agency (typically the city clerk) within 30 days of reaching the $5,000 threshold. § 84224(a).

The report must contain the following information:

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

The report must also include the following information to the extent known to the elected official:

- A brief description[4] of the relationship between the nonprofit organization and the elected official, their family member, member of their campaign, or member of their staff; and

- A brief description of any proceedings before the elected official's agency at the time of the payment or 12 months before the payment, in which the nonprofit organization is a named party or subject of the decision.

Regulation 18424. The statute does not define the term "legislative, governmental, or charitable purposes," but charitable purposes typically involve 501(c)(3) organizations. Examples of "governmental" purposes include fundraising for a new city hall roof, an inaugural celebration committee,[5] litigation expenses,[6] a breakfast honoring public safety personnel,[7] and youth conferences.[8] The term "legislative purpose," in turn, refers to a 1996 FPPC opinion in which a state senator asked a private party to pay for a witness's airfare and expenses to testify at a legislative hearing.[9]

These reporting requirements also apply if the payment is "made at the behest of" the elected officer, even if the officer did not actively solicit contributions. §§ 82004.5, 82041.3. A payment is "made at the behest of" an elected officer when it is made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" that officer. *Id*.

This disclosure requirement does not apply to a behested payment made by a local, state, or federal governmental agency for a principally legislative or governmental purpose. § 84224(b)(4).

2. Conflicts of Interest Under the Political Reform Act

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

[4] A "brief description" includes any decision making capacity within the organization, salaried employment, status as a founding member, and honorary or advisory board positions. Regulation 18424(a).
[5] *Sutton* Advice Letter, No. A-05-256, 2005 WL 3693740 (2005).
[6] *Stoen* Advice Letter, No. A-03-185, 2004 WL 334564 (2004) (district attorney's expenses in suing a private company when governing body withdrew funding for effort).
[7] *Gallegos* Advice Letter, No. A-00-059, 2000 WL 311529 (2000).
[8] *Gallegos* Advice Letter, No. A-98-192, 1998 WL 671296 (1998).
[9] *Schmidt* Advice Letter, No. A-96-098, 1996 WL 779579 (1996).

- Any business entity in which the public official has a direct or indirect investment worth $2,000 or more.

- Any real property in which the public official has a direct or indirect interest worth $2,000 or more.

- Any source of income, including commission income or incentive income, aggregating to at least $500 within 12 months prior to the time when the decision is made. The $500 must be provided or promised to, or received by, the official during the 12 months before the decision.

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

- Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $590 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

§ 87103; Regulations 18700 and 18940.2. The FPPC regulations interpret and provide guidance for most of the terms used in the Act. The FPPC also provides standards for determining if each element of the Act's prohibitions has been satisfied.

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

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

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

STEP ONE: IS A PUBLIC OFFICIAL INVOLVED?

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

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

- A "member" does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decision-making authority. A board or commission possesses decision-making authority if: (i) it may make a final governmental decision, (ii) it may compel or prevent a governmental decision by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden, or (iii) it makes substantive recommendations, which, over an extended period of time, have been regularly approved without significant amendment or modification by another official or agency. Regulation 18700(c)(2).

- A "consultant"[10] includes an individual who, pursuant to a contract with a state or local government agency, makes specific kinds of governmental decisions or serves in a staff capacity with the agency and either participates in governmental decisions or performs the same or substantially all of the same duties that would otherwise be performed by a person in a position listed in the agency's conflict of interest code. Regulation 18700.3.

STEP TWO: WHAT ARE THE PUBLIC OFFICIAL'S FINANCIAL INTERESTS?

Identify the public official's financial interests.

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

- A business entity in which the official has a direct or indirect investment worth at least $2,000.[11] (Note: In certain situations, this can include a parent,[12] subsidiary,[13] or otherwise related[14] business entity.[15])

[10] For more on who constitutes a "consultant" subject to the Act, see, e.g., *Ennis* Advice Letter, FPPC No. A-15-006, 2015 WL 1781144 (2015).

[11] The FPPC has determined that membership in a country club is a financial interest in the club as a business entity when the membership is transferrable and can be resold for profit or loss. *Gee* Advice Letter, FPPC No. A-17-249, 2018 WL 723401 (2018).

[12] A business entity is a "parent" if it is a corporation that controls more than 50 percent of the voting stock of another corporation; the parent corporation is also a parent to any subsidiaries of the corporation that it controls. Regulation 18700.2 (b)(1).

[13] A business entity is a "subsidiary" if it is a corporation whose voting stock is more than 50 percent controlled by another corporation; the subsidiary corporation is also a subsidiary to any corporation that controls its parent corporation. Regulation 18700.2 (b)(2).

[14] Business entities, other than a parent corporation, are "otherwise related" if (1) the same person or persons together direct or control each business entity, or (2) the same person or persons together have a 50 percent or greater ownership interest in each business entity. Regulation 18700.2 (b)(3).

[15] An official with a financial interest in a business entity also has an interest in a parent or subsidiary of the business entity or an otherwise related business entity, unless (1) the official's only interest is that of a shareholder and the official is a passive shareholder with less than 5 percent of the shares of the corporation, and (2) the parent corporation is required

- Any real property in which the public official has a direct or indirect interest worth at least $2,000.[16] Real property interests include all leases except month-to-month leases and leases with terms shorter than a month. Regulation 18233.

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

- Any business entity in which the public official is a director, officer, partner, trustee, or employee, or holds any position of management. (Note: Again, this may include a parent, subsidiary, or otherwise related business entity.)

- Any donor of gifts, or any intermediary or agent for a donor of gifts, amounting to at least $590 where that amount is provided to, received by, or promised to the official in the 12 months prior to a governmental decision. Regulation 18700(c)(6)(E).

- The personal finances of the public official and immediate family.[17] This is a sort of "catch-all" provision that is meant to address economic interests of a public official and his or her immediate family that do not qualify as investments, property, or business entities, but are nonetheless potentially affected by government decisions.

§§ 82047, 87103; Regulations 18700, 18940.2. The terms "indirect investment" and "indirect interest" are used to indicate investments and interests owned by the spouse or dependent child of the public official, an agent of the public official, or a business entity or trust in which the official, or his or her agent(s), spouse, or dependent children, has at least a 10 percent ownership interest. Regulation 18700(c)(6)(F).

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to file annual Form 10-K or 20-F Reports with the Securities and Exchange Commission and has not identified the subsidiary on those forms or its annual report. Regulation 18700.2 (c)-(d).

[16] The FPPC has determined that membership in a country club is a financial interest in real property when the member would be entitled to a proportionate share of the value of the club's assets if the club were dissolved. *Gee* Advice Letter, FPPC No. A-17-249, 2018 WL 723401 (2018).

[17] The FPPC determined that a public official had a financial interest in his personal finances when considering a decision to award a contract for waste hauling services at a facility located near his mobile home. *Brady* Advice Letter, FPPC No. A-22-027, 2022 WL 16725545 (2022).

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

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

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

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

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

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

- The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

- Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

- Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.

- Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's financial interest might compromise a public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public.

- Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.

- Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position.

Possession of a real estate, brokerage license, or other professional license does not automatically constitute a reasonably foreseeable effect on the official's financial interest. Regulation 18701.1. The official's likely business activity must be considered to determine whether the governmental decision will have a reasonably foreseeable effect on one of the official's financial interests.

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

STEP FOUR: WILL THE REASONABLY FORESEEABLE EFFECT BE MATERIAL?

Determine whether the reasonably foreseeable financial effect will be material.

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

a. Business Entities

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

- Initiates the proceeding by filing an application, claim, appeal, or other request for action concerning the entity with the official's agency;
- Offers to sell a product or service to the official's agency;
- Bids on or enters into a contract with the official's agency, or is identified as a subcontractor on a bid or contract with the agency;
- Is the named or intended manufacturer or vendor of any products to be purchased by the official's agency with an aggregate cost of $1,000 or more in any 12-month period;
- Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement from the official's agency;
- Is the subject of any inspection, action, or proceeding under the regulatory authority of the official's agency; or
- Is otherwise subject to an action taken by the official's agency that is directed at the entity.

The reasonably foreseeable effect of a decision on a business entity in which the official has an investment interest or holds an employment or management position is also material if any of the following criteria are met:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or more than:
  - ✓ $1,000,000; or
  - ✓ Five percent of the entity's annual gross revenues and the increase or decrease is at least $10,000.
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than:
  - ✓ $250,000; or
  - ✓ One percent of the entity's annual gross revenues and the change in expenses is at least $2,500.

- The official knows, or has reason to know, that the entity has an interest in real property and:

  - ✓ The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) - (6); or

  - ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

There is also a "small shareholder" exception that allows officials to participate in decisions explicitly involving a business entity where the official's only interest in that business entity is an investment interest worth no more than $25,000. Regulation 18702.1(b). To qualify for this exception, the interest also must be less than one percent of the business entity's shares. However, meeting these thresholds does not automatically allow the official to participate in the decision. The official still must analyze the decision's potential effect on the business entity's annual gross revenues, assets and liabilities, expenses, and real property interests. Under this rule, even where an official has only a small investment in a business entity, the impact of a decision might be so significant that the official still has a conflict of interest.

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

The traditional "500-foot" rule has been replaced with an extensive list of criteria that must be analyzed to determine whether a decision will have a material financial effect on an official's real property interest. Regulation 18702.2. There are now eight materiality standards that must be evaluated when an official has an ownership interest in real property, and four materiality standards that must be evaluated when an official has a leasehold interest in real property (i.e., as the lessee of the property).

Regulation 18702.2 now provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property economic interest, other than a leasehold interest, is material whenever the governmental decision:

- Involves the adoption of, or amendment to, a development plan or criteria applying to the parcel;

- Determines the parcel's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in, or exclusion from, any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries;

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

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

- Involves the issuance, denial or revocation of a license, permit, or other land use entitlement authorizing a specific use of or improvement to the

parcel or any variance that changes the permitted use of, or restrictions placed on, that real property;

- Involves construction of, or improvements to, streets, water, sewer, storm drainage, or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services;

- Involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property; or

- Involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

  - ✓ Development potential;

  - ✓ Income producing potential;

  - ✓ Highest and best use;

  - ✓ Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or

  - ✓ Market value.

Regulation 18702.2(b) clarifies that the financial effect of a governmental decision on a parcel of real property in which an official has an ownership interest is presumed not to be material whenever the governmental decision involves property located 1,000 feet or more from the property line of the official's property. This presumption may be rebutted, however, with clear and convincing evidence that the governmental decision would have a substantial effect on the official's property.

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

With respect to an official's leasehold interests, i.e., where the official is the lessee of the property, Regulation 18702.2(c) now provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property economic interest is material only if the governmental decision will:

- Change the termination date of the lease;
- Increase or decrease the potential rental value of the property;
- Change the official's actual or legally allowable use of the property; or
- Impact the official's use and enjoyment of the property.

There are a few exceptions in Regulation 18702.2(d) by which the effect of a decision on an official's real property interest will not be considered material. The following decisions will not be considered to have a material effect on an official's real property interest:

- The decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage, or similar facilities.
- The decision solely concerns the adoption or amendment of a general plan and all of the following apply:
  - ✓ The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is a financial interest to the public official, or by a person representing either the public official or a financial interest to the public official.
  - ✓ The decision requires a further decision or decisions by the public official's agency before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.
  - ✓ The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and the economic interests of the official are not singled out.
  - ✓ The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

These rules replace the old "500-foot rule" that applied before 2014. Of special interest to many local public officials, these provisions appear to allow public officials to

participate in most decisions relating to slurry sealing, asphalt paving, curb and sidewalk repairs, or tree replacement, even if the work occurs within 500 feet of their property, due to the exception for repairs and replacement of existing infrastructure.

c. Sources of Income

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

The regulations provide that any reasonably foreseeable financial effect on an individual, organization, or business entity[18] that is a source of income to an official or an official's spouse is material if:

- The source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party; or
- The decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official, or the official's spouse, receives or is promised the income for achieving the purpose or goal. This is known as the "Nexus" test.

Regulation 18702.3(a)(1), 18702.3(b). In addition to these general standards, the regulations provide further guidance that separately analyzes a source of income depending on whether the source is an individual, non-profit organization, or business entity. If the source is an ***individual***, a reasonably foreseeable financial effect on the source is material if:

- The decision may affect the individual's income, investments, or other assets or liabilities (other than an interest in a business entity or real property) by $1,000 or more;
- The official knows, or has reason to know, that the individual has an interest in a business entity that will be financially affected under the materiality standards in Regulation 18702.1; or
- The official knows, or has reason to know, that the individual has an interest in real property, and either:
  - ✓ The property is a named party in, or the subject of, the decision as defined in Regulations 18701(a) and 18702.2(a)(1) - (6); or

[18] The materiality standards for sources of income provided in this section do not apply where a government entity qualifies as a source of income, including where a public official is paid by the entity as a consultant or contractor. Regulation 18702.3(d). An official with an interest in a governmental entity is disqualified from taking part in a decision only if there is a unique effect on that official. *Id.*

- ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

If the source is a ***nonprofit organization***, a reasonably foreseeable financial effect on the source is material if:

- The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than (1) $1,000,000, or (2) five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than $10,000;

- The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than (1) $250,000, or (2) one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than $2,500; or

- The official knows, or has reason to, know that the organization has an interest in real property and either:

  - ✓ The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) - (6); or

  - ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

If the source is a ***business entity***, a reasonably foreseeable financial effect on the source is material if that business entity will be financially affected under the standards as applied to a financial interest in Regulation 18702.1 (see ***Business Entities*** above). Regulation 18702.3(a). The regulation also includes additional provisions to help officials who receive income from retail sales of a business entity in determining when a retail customer becomes a source of income to the public official directly. § 87103.5. This regulatory provision, which is intended to replace prior Regulation 18707.5, provides that:

- The retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public, and provides goods or services to customers that comprise a broad base of persons representative of the jurisdiction; and

- Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the general clientele of the business. An official is unable to recognize a significant monetary difference when: (1) the business is of the type that sales to any one customer will not have a significant impact on the business's annual net sales; or (2) the business has no records that distinguish customers by

amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer.

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

d. Sources of Gifts

The FPPC regulations also provide materiality standards for sources of gifts. Regulation 18702.4. For the purpose of analyzing potential conflicts under the Political Reform Act, a donor becomes a "source of gifts" by providing or promising a public official with gifts valued at $590 or more in the aggregate in the 12 months prior to a governmental decision. Regulations 18700(c)(6)(E), 18940.2. A person may also be a source of a gift by being an "intermediary or agent for a donor of" a similar gift. Regulation 18700(c)(6)(E).

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

- The source is a claimant, applicant, respondent, contracting party, or otherwise named or identified as the subject of the proceeding;

- The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5 (see ***Personal Finances*** below), or the official knows, or has reason to know, that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively;

- The source is a nonprofit organization that will be financially affected under the materiality standards applied to a nonprofit source of income interest in Regulation 18702.3 (see ***Sources of Income*** above); or

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

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

e. Personal Finances

Finally, the regulations provide materiality standards for effects on personal finances. Regulation 18702.5. A reasonably foreseeable financial effect on an official's or his or her immediate family's personal finances is considered material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of $500 or more in any 12-month period due to the decision. Regulation 18702.5(a).

However, a financial effect is ***not*** considered material under Government Code Section 87103 if the decision would do any of the following:

- Affect only the salary, per diem, or reimbursement for expenses of the public official, or a member of his or her immediate family receives from a federal, state, or local government agency unless the decision is to appoint (other than an appointing decision otherwise permitted under Regulation 18702.5), hire, fire, promote, demote, suspend without pay, or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official's immediate family member is the only person in the job classification or position.

- Appoint the official to be a member of any group or body created by law or formed by the official's agency for a special purpose. However, if the official will receive a stipend for attending meetings of the group or body aggregating $500 or more in any 12-month period, the effect on the official's personal finances is material unless the appointing body posts specified information on its website.[19]

- Appoint the official to be an officer of the governing body of which the official is already a member, such as a decision to appoint a city councilmember to be the city's mayor.

- Establish or change the benefits or retirement plan of the official or the official's immediate family member, and the decision applies equally to all employees or retirees in the same bargaining unit or other representative group.

- Result in the payment of any travel expenses incurred by the official or the official's immediate family member while attending a meeting as an authorized representative of an agency.

[19] Specifically, the appointing body must post all of the following information on its website: (1) a list of each appointed position and its term; (2) the amount of the stipend for each appointed position; (3) the name of the official who has been appointed to the position; and (4) the name of any official who has been appointed to be an alternate for the position. Regulation 18702.5(b)(2).

- Permit the official's use of any government property, including automobiles or other modes of transportation, mobile communication devices, or other agency-provided equipment for carrying out the official's duties, including any nominal, incidental, negligible, or inconsequential personal use while on duty.

- Result in the official's receipt of any personal reward from the official's use of a personal charge card or participation in any other membership rewards program, so long as the reward is associated with the official's approved travel expenses and is no different from the reward offered to the public.

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

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

STEP FIVE: DOES THE "PUBLIC GENERALLY" EXCEPTION APPLY?

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

Once it is determined that it is reasonably foreseeable that a decision will have a material financial effect on an official's financial interest, it is necessary to evaluate whether an exception to the disqualification requirement is applicable. One exception, known as the "public generally" exception, provides that even if a governmental decision will have a reasonably foreseeable material financial effect on the official's financial interest, disqualification will not be required if the effect on the public official's financial interest is indistinguishable from the decision's effect on the financial interests of the public generally. Regulation 18703.

In order to use this exception, the official must be able to demonstrate two core elements. First, the governmental decision must affect a "significant segment" of the public in the jurisdiction of the public agency. Second, the governmental decision's effect on the official's financial interest must not be unique as compared to the effect on the significant segment. Regulation 18703(a).

The FPPC has simplified the regulation to determine what constitutes a sufficiently "significant segment" of the public. Regulation 18703(b). A significant segment of the public is:

- At least 25 percent of any of the following:
  - ✓ All businesses or nonprofit entities within the official's jurisdiction;
  - ✓ All real property, commercial real property, or residential real property within the official's jurisdiction; or
  - ✓ All individuals within the official's jurisdiction.
- At least 15 percent of residential real property within the official's jurisdiction, if the official's only interest in a government decision is the official's primary residence.

Regulation 18703(b).

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

- The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
- An official's business entity or real property resulting from the proximity of a project that is the subject of a decision.
- An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests[20] in similar entities or properties that is substantially greater than the effect on a single interest.
- An official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.
- A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.
- An official's personal finances or those of his or her immediate family.

Regulation 18703(c).

[20] Ownership of only two residential properties apparently would not constitute "multiple interests ... in properties that is substantially greater than the effect on a single interest." *Peake* Advice Letter, FPPC No. A-15-227, 2015 WL 9680333 (2015).

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

The FPPC Regulations include a number of specialized "public generally" exceptions. Regulation 18703(e). The financial effect on an official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes:

- The decision sets or adjusts the amounts of assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate. However, the exception does not apply if the decision imposes assessments, taxes, or fees, determines the boundaries of a property, or determines who is subject to the assessments, taxes, or fees. Under this exception, these factors must already be determined.

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

- The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.

- The decision is limited to establishing, eliminating, amending, or otherwise affecting the rights or liabilities of tenants and owners of residential real property, including rent control or tenant protection matters. Officials may participate if: (1) the decision is applicable to all residential rental properties within the official's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act; (2) the official owns three or fewer residential units; and (3) the only interests affected by the decision are the official's interest in residential real property as a landlord or the official's interest in a primary residence as owner or lessee.

- The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a

representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented.

- The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency.

- The decision affects a federal, state, or local governmental entity in which the official has an interest.

Regulation 18703(e).

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

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

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

- A public official "makes" a governmental decision when the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. Regulation 18704(a).[21]

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

- A public official "uses an official position to influence" a decision if the official: (i) contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or (ii) contacts or appears

[21] A public official's "determination not to act" does not constitute participating in "making" a governmental decision when the public official is abstaining from a decision due to a personal financial interest.

> before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

Regulation 18704(c).

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

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

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

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

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

A public official also is permitted to participate in making a governmental decision, despite having a conflict of interest in the decision, if no alternative source of decision exists that would be consistent with the purposes and terms of the statute authorizing the decision. Regulation 18700(e), 18705(a).

This exception is applied when a quorum of a legislative body cannot be convened due to the disqualifying conflicts of interests of its members. In that situation, as many

members as are needed to create the minimum number for the quorum may be selected at random to participate. In these situations, stringent disclosure requirements apply, not only regarding the basis of the selected member's conflict of interest, but also the reason why there is no alternative source of decision-making authority. Regulation 18705(b). For the purposes of this section, a "quorum" means "the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item, the "quorum" shall be that minimum number of members needed for that adoption." Regulation 18705(d).

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

4. Abstention

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

The Act establishes specific procedures that most public officials must follow when they have a conflict of interest and are required to abstain from a decision. § 87105; Regulation 18707. Immediately prior to the consideration of the matter, the official must: (i) identify each financial interest that gives rise to the conflict in detail sufficient to be understood by the public (except that disclosure of the exact street address of a residence is not required); (ii) publicly state his or her recusal from the matter; and (iii) leave the room until after the disposition of the matter unless the matter appears on a consent calendar, or other similar portion of an agenda for uncontested matters, or the official is speaking as a member of the public regarding an applicable personal interest. § 87105; Regulations 18707, 18704(d)(2). The FPPC recently clarified the procedure required and precise information that must be disclosed, as described in new Regulation 18707. This includes additional information regarding rules for closed sessions and matters on the consent calendar. Public officials may not avoid disclosure through partial absences and must disclose financial interests either immediately prior to consideration of an item or if the official arrives after consideration, immediately after the official joins the meeting.

The procedure stated in Regulation 18707(a) must be followed by all council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. §§ 87105, 87200. The Act does not require other public officials who must file financial disclosure forms under local conflict of interest codes to follow the same procedure, but the FPPC has now prescribed specific rules for those public officials. Regulation 18707(b).

Depending on the nature of his or her interest, a public official who must abstain from a decision may comment on the item as a member of the public during the public comment period on a matter related to his or her "personal interests." The term "personal interest" is defined to include an interest in real property or a business entity that is wholly owned by the official or his or her immediate family. Regulations 18704(d)(2)(A) and (B). It also includes business entities over which the official, or the official and his or her immediate family, exercise sole direction and control. Regulation 18704(d)(2)(C).

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

Note that when a public official abstains from a decision, his or her presence does not count toward achieving a quorum. Regulation 18707(a)(3). Accordingly, if several officials must abstain from a decision under the Political Reform Act, there may not be sufficient members of the body present to consider a matter under the Brown Act. In such a circumstance, it may be possible to use the exception for legally required participation, as discussed above.

5. Penalties for Violation

Administrative, civil, and criminal penalties exist for violations of the conflict of interest provisions of the Act. The FPPC may levy administrative penalties after a hearing and may impose a fine of up to $5,000 per violation, a cease and desist order, and an order to file reports. § 83116. The FPPC recently updated regulations providing for streamlined administrative enforcement procedures and specific penalties for various types of violations. Regulations 18360, 18360.1, 18360.2, 18360.3.

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

6. Seeking Advice on Conflict of Interest Questions

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

B. Government Code Section 1090

Government Code Section 1090 provides in relevant part: "[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

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

Upon the enactment of the Act in 1974, questions arose as to whether that new law impliedly repealed or preempted the provisions of Section 1090. The California Attorney General addressed this issue first, concluding in a 1976 opinion that the Act did not implicitly repeal or preempt Section 1090. 59 Ops. Cal. Att'y Gen. 604, 671 (1976). Since that time, the courts and the Attorney General have consistently considered Section 1090 as having continuing effect. For example, in *People v. Honig*, 48 Cal. App. 4th 289, 328-29 (1996), the defendant in a criminal case for violations of Section 1090 argued that the Act superseded Section 1090. The California Court of Appeal declined to so rule, holding instead that the term "financially interested" in Section 1090 has a different meaning than the term "material financial effect" in the Act. In another case, the California Court of Appeal again held that the Act and Section 1090 are "two different statutory schemes." *City of Vernon v. Central Basin Mun. Water Dist.*, 69 Cal. App. 4th 508, 513 (1999); see also *Fraser-Yamor Agency, Inc. v. County of Del Norte*, 68

Cal. App. 3d 201 (1977); *People v. Vallerga*, 67 Cal. App. 3d 847 (1977); *City Council v. McKinley*, 80 Cal. App. 3d 204 (1978); *City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191 (1980); *Thomson* v. Call, 38 Cal. 3d 633 (1985); *Campagna v. City of Sanger*, 42 Cal. App. 4th 533 (1996); 67 Ops. Cal. Att'y Gen. 369, 375 (1984); 69 Ops. Cal. Att'y Gen. 102 (1986); 70 Ops. Cal. Att'y Gen. 45, 47 (1987); 73 Ops. Cal. Att'y Gen. 191, 194-95 (1990).

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

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

1. Three Principal Components of Section 1090

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

a. Officer or Employee of Listed Government Entity

The first element is whether the person subject to the prohibition is a member of the Legislature or an officer or employee of the state, a county, a district, a judicial district, or a city. Virtually every officer or employee of a municipality or local governmental district is subject to the prohibition of Section 1090. In 2018, the Attorney General concluded that a California charter school's governing body is also subject to Section 1090. 101 Ops. Cal. Atty. Gen. 92.

In recent years, the courts also have concluded that consultants may be considered "employees" for the purpose of civil liability under Section 1090. In 2017, the California Supreme Court held that Section 1090 applies to independent contractors "when they have duties to engage in or advise on public contracting that they are expected to carry out on the government's behalf." *People v. Superior Court (Sahlolbei)*, 3 Cal. 5th 230 (2017); see also, *California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc.*, 148 Cal. App. 4th 682, 691 (2007); see also,

Hub City Solid Waste Services, Inc. v. City of Compton, 186 Cal. App. 4th 1114, 1124-1125 (2010). Moreover, the courts have held that even private companies may be subject to Section 1090 where the company has the potential to exert considerable influence over the agency's contracting decision. *Davis v. Fresno Unified School District*, 237 Cal. App. 4th 261 (2015); *McGee v. Balfour Beatty Construction*, LLC, 247 Cal. App. 4th 235, 261 (2016). In 2019, the California Court of Appeal clarified that a consultant's mere provision of services to a public agency does not create a *per se* conflict of interest precluding future contracts, if, in the initial transaction, the consultant was not entrusted with acting on behalf of the public agency. *California Taxpayers Action Network v. Tabor Construction, Inc.*, 42 Cal. App. 5th 824 (2019).

As such, we advise that both public agencies and independent contractors carefully evaluate whether their duties and obligations include engaging in or advising on public contracting. If so, their involvement in those contracting decisions must be evaluated for compliance with Section 1090.

b. Financial Interest in a Contract

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

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

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

In *Thomson*, a council member sold certain real property to a third party, knowing that the city was negotiating a deal to acquire multiple parcels of property in that area for a public park. The third party then conveyed the council member's property to the city, in an apparent attempt to evade the provisions of Section 1090. The court essentially "unwound" and invalidated the entire transaction based on the council member's

interest in the transaction. The court refused to focus on the isolated contract between the city and the third party that bought the property from the council member, but rather viewed all of the successive contracts as one complex multi-party agreement. The court ordered the council member to disgorge all funds he received in the transaction and ordered that the city retain title to the property. The court noted that this type of severe remedy was necessary to discourage violations of Section 1090.

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

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

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

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

The ruling in *Eden Township* could be construed to suggest that an official is only "financially interested" in a contract that affects the official's compensation or continued employment.[22] In light of subsequent FPPC advice letters, however, there is continued uncertainty regarding the application and interpretation of the court's holding in *Eden Township*.[23] As such, we recommend that public officials seek legal assistance whenever a potential Section 1090 conflict arises.

In addition to a "financial interest," there must be a contract in order for Section 1090 to apply, as described below. General contract principles apply to this determination and include such arrangements as purchase and service contracts as well as development agreements between a city and a developer (78 Ops. Cal. Att'y Gen. 230 (1995)); 82 Ops. Cal. Att'y Gen. 126, 129 n.4 (1999)), joint powers agreements (*People v. Gnass*, 101 Cal. App. 4th 1271, 1301 (2002)), and payments for conference attendance expenses (75 Ops. Cal. Att'y Gen. 20 (1992)).

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

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

> "[T]here is ample authority the negotiations, discussions, reasoning, planning, and give and take which go beforehand in the making of a decision to commit oneself must all be deemed to be a part of the making of an agreement in the broad sense. [Citation omitted.] Thus, the

[22] See also, *Ansolabehere* Advice Letter, FPPC No. A-15-180, 2015 WL 9680325 (2015); *Devaney* Advice Letter, FPPC No. A-15-213, 2015 WL 7252462 (2015); but cf. Carney Advice Letter, FPPC No. A-16-073, 2016 WL 3212417 (2016) and *Diaz* Advice Letter, FPPC No. A-16-214, 2016 WL 7033000 (2016).

[23] See, e.g., *Diaz* Advice Letter, FPPC No. A-16-214, 2016 WL 7033000 (2016) and *Roy* Advice Letter, FPPC No. A-16-157, 2016 WL 6565871 (2016).

> final execution of a contract, which is the time when the contract is technically made, is not the only time when a conflict of interest may be presented."

80 Cal. App. 3d at 212.

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

2. Exceptions to Section 1090

a. "Remote Interest" Exception

There are two categories of exceptions to Section 1090. The first, encompassing what are commonly referred to as "remote interests," is set forth in Section 1091. If an official has only a remote interest in a contract, then the local agency may enter into the contract as long as the official abstains from participating in the making of the contract in any way. Although this is not an exhaustive list of the "remote interest" exceptions, a few examples of "remote interest" exceptions include the following:

- Remote interest exception for a compensated officer or employee of a nonprofit corporation (Section 1091 (b)(1));
- Remote interest exception for a person receiving a government salary, per diem, or reimbursement for expenses, even when the contract involves the department of the government entity that employs the board member (Section 1091 (b)(13));
- Remote interest exception for a litigation settlement agreement between an officer that is a party to litigation involving the body or board of which the officer is a member (Section 1091 (b)(15); and
- Remote interest exception for the owner or partner of a firm who serves as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from: (1) providing any advice to the contracting agency regarding the contract between the firm and the contracting agency; and (2) any participation in reviewing a project that results from that contract (Section 1091 (b)(17)).

The "remote interest" exception applies only if the interest is disclosed to the body that approves the contract, the disclosure is noted in that body's official records, and the official abstains from voting. Further, members with a "remote interest" may not

attempt to influence any other member of the body or board of which they are members to enter into the contract.

b. "Non-Interest" Exception

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

- Non-interest exception for government salary, per diem, or reimbursement of expenses when the contract does not involve the department of the government entity that employs the officer or employee (Section 1091.5 (a)(9));

- Non-interest exception for government salary to an officer's or employee's spouse when the spouse was employed by the government entity for at least one year prior to the officer's or employee's election or appointment (Section 1091.5 (a)(6));

- Non-interest exception for a non-compensated officer of a nonprofit corporation that supports the functions of the public entity or to which the public entity is required to give particular consideration (Section 1091.5 (a)(8));

- Non-interest exception for non-salaried members of a nonprofit corporation (Section 1091.5 (a)(7));

- Non-interest exception involving the receipt of public services on the same terms as would be provided if the officer were not a member of the governmental body or board (Section 1091.5(a)(3)); and

- Non-interest exception for contracts for public services between a special district and its board members if the special district requires board members to be landowners or representatives of a landowner and the contract is made on the same terms and conditions granted to everyone else. (Section 1091.5(a)(14)). For purposes of the exception, "public services" include the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.

3. A Contract Made in Violation of Section 1090 is Void and Officials Violating Section 1090 Are Subject to Severe Penalties

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

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

4. Aiding and Abetting Section 1090 Violations

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

5. Seeking FPPC Advice on Section 1090

In 2013, the State Legislature adopted Assembly Bill 1090, which amended the enforcement provisions applicable to Government Code Section 1090. With the adoption of AB 1090, a person who is subject to the prohibition in Government Code Section 1090 may request advice and/or a formal opinion from the FPPC. § 1097.1(c). Opinions or advice must be requested prior to any action being taken, as the FPPC cannot issue options or advice based on past conduct. § 1097.1(c)(2). Such advice is admissible as evidence of good faith conduct by the requester if the requester truthfully

disclosed all material facts and relied on the advice or opinion of the FPPC. § 1097.1(c). In addition, the FPPC is now authorized to enforce the prohibition in Government Code Section 1090 through administrative or civil actions. § 1097.1(a).

6. Statute of Limitations for Section 1090 Violations

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

C. Common Law Doctrine Against Conflicts of Interest

The common law doctrine against conflicts of interest constitutes the courts' expression of the public policy against public officials using their official positions for their private benefit. See *Terry v. Bender*, 143 Cal. App. 2d 198, 206 (1956). This doctrine provides an independent basis for requiring public officials and employees to abstain from participating in matters in which they have a financial interest. Violation of the doctrine can amount to official misconduct and can result in loss of office. *Nussbaum v. Weeks*, 214 Cal. App. 3d 1589 (1989).

By virtue of holding public office, an elected official "is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928). An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of a private interest. *Id.*

The common law doctrine against conflicts of interest has been primarily applied to require a public official to abstain from participation in cases where the official's private financial interest may conflict with his or her official duties. 64 Ops. Cal. Att'y Gen. 795, 797 (1981). However, the doctrine also applies when specific circumstances preclude a public official from being a disinterested, unbiased decision maker for a quasi-judicial matter. In one case, a council member who voted to deny permits for a condominium project near his house was deemed to have a common law conflict of interest (i.e., bias) due to his interest in preserving his ocean view and his personal animosity toward the applicants. *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996).

However, a more recent court decision creates some uncertainty as to whether the common law doctrine should be applied when statutory conflict of interest laws already address the particular situation. In *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1233 (2000), the court declined to construe allegations of an official's bias in a decision to constitute a conflict of interest at common law when the applicable statutes already had been construed not to create a conflict of interest in that situation. In *BreakZone*, the court indicated, "[w]e continue to be cautious in

finding common law conflicts of interest . . . . We reject the application of the doctrine in this case, assuming, arguendo, it exists." 81 Cal. App. 4th at 1233.

II. OTHER SPECIALIZED CONFLICTS OF INTEREST LAWS AND REGULATIONS

A. Doctrine Against Holding Incompatible Offices

1. The Common Law Doctrine Against Holding Incompatible Offices

In addition to Government Code Section 1099 (discussed below), a common law doctrine (that is, legal principles established over time by court decisions) applies to prevent public officials from holding multiple public offices simultaneously. The common law doctrine against incompatibility of offices arose from a concern that the public interest would suffer when one person holds two public offices which might possibly come into conflict. The California Supreme Court set forth the following test for incompatibility of offices in People ex rel. *Chapman* v. *Rapsey*, 16 Cal. 2d 636 (1940):

> "Two offices are said to be incompatible when the holder cannot in every instance discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both."

16 Cal. 2d at 641-42. Incompatibility of offices is not measured only by conflicts which do exist, but also by those conflicts which might arise. *Chapman*, 16 Cal. 2d 636, 641-42 (1940); 66 Ops. Cal. Att'y Gen. 382, 384 (1983); 64 Ops. Cal. Att'y Gen. 288, 289 (1981).

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

> "[A] public office is said to be the right, authority, and duty, created and conferred by law — the tenure of which is not transient, occasional, or incidental — by which for a given period an individual is invested with power to perform a public function for public benefit . . . .
>
> One of the prime requisites is that the office be created by the Constitution or authorized by some statute. And it is essential that the incumbent be clothed with a part of the sovereignty of the state to be exercised in the interest of the public."

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

Incompatibility can be triggered if the duties of the two offices "overlap so that their exercise may require contradictory or inconsistent action, to the detriment of the public interest." *People ex rel. Bagshaw v. Thomson*, 55 Cal. App. 2d 147, 150 (1942). Only one significant clash of duties and loyalties is required to make offices incompatible. 37 Ops. Cal. Att'y Gen. 21, 22 (1961). The policy set forth in *Chapman* includes prospective as well as present clashes of duties and loyalties. 63 Ops. Cal. Att'y Gen. 623 (1980).

Abstention has not been recognized as a remedy for incompatible offices. The general rule provides:

> "The existence of devices to avoid . . . [conflicts] neither changes the nature of the potential conflicts nor provides assurances that they would be employed. Accordingly, the ability to abstain when a conflict arises will not excuse the incompatibility or obviate the effects of the doctrine."

66 Ops. Cal. Att'y Gen. 176, 177 (1983) (citation omitted).

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

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

- County board of supervisors member and community college board member. 78 Ops. Cal. Att'y Gen. 316 (1995).
- Fire chief and board of supervisors member. 66 Ops. Cal. Att'y Gen. 176 (1983).
- Public utility district member and county board of supervisors member. 64 Ops. Cal. Att'y Gen. 137 (1981).
- School district trustee and council member. 73 Ops. Cal. Att'y Gen. 354 (1990).
- School board member and council member. 65 Ops. Cal. Att'y Gen. 606 (1982).
- County planning commissioner and council member. 63 Ops. Cal. Att'y Gen. 607 (1980).
- Fire chief and council member. 76 Ops. Cal. Att'y Gen. 38 (1993).
- County planning commissioner and city planning commissioner. 66 Ops. Cal. Att'y Gen. 293 (1983).

- County planning commissioner and county water district director. 64 Ops. Cal. Att'y Gen. 288 (1981).

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

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

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

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

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

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

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

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

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

As is the case under the common law doctrine, Section 1099 provides that when two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second office. However, Section 1099 recognizes that certain state laws or possibly local ordinances may expressly provide for the simultaneous holding of particular offices and that result would not be precluded by Section 1099.[24] Section 1099 does not apply if one of the positions is a mere position of

[24] See, e.g., *People ex rel. Lacey v. Robles*, 2020 WL 467582 (2020), which held that Section 1099's exception to the rule against holding incompatible offices if "simultaneous holding of the particular offices is compelled or expressly authorized by law" did not apply to an official serving as a mayor and a member of the board of directors for a water replenishment district, despite the fact that the city council and the water replenishment district adopted an ordinance and resolution, respectively, authorizing the official to simultaneously hold both offices. The court reasoned that (1) the Legislature's reference to "law" is "best understood as a reference to state, not local, law"; and (2) even if the reference to "law" could be understood to allow local jurisdictions to deem offices compatible notwithstanding a possible conflict in duties or loyalties, the water replenishment district lacked the authority to authorize its board members to hold incompatible offices.

employment rather than a public office. It also does not apply when one of the positions is a member of a legislative body that has only advisory powers. § 1099(c), (d).

B. Incompatible Outside Activities

Government Code Section 1126(a) provides, in relevant part:

> "[A] local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. . . ."

The provisions of Section 1126 prohibit officials and employees of a local government agency from engaging in outside employment or activities where any part of the employment or activity will be subject to approval by any other officer, employee, board or commission of the local agency. Exceptions are created to permit a public official to engage in outside employment by a private business, and to permit an attorney employed by a local agency in a non-elective position to serve on an appointed or elected governmental board of another agency. §§ 1127, 1128.

However, the court in *Mazzola v. City and County of San Francisco*, 112 Cal. App. 3d 141 (1980) ruled that Section 1126 provides only authorization to implement standards for incompatibility pursuant to paragraph (b) of Section 1126. The court ruled that the restrictions of Section 1126 are not self-executing because existing and future employees should have notice that specific outside activities are, or are not compatible with their duties as an officer or employee of the local agency. Thus, Section 1126 would not bar a public official from holding a position outside his or her public agency unless the public agency in which he or she serves as a public official adopts an ordinance in compliance with the requirements of Section 1126 that specifies that the two positions or activities are incompatible. Many cities have not adopted such ordinances.

In light of the court's decision in *Mazzola*, the Attorney General ruled that Section 1126 did not apply to any elected official, such as a council member, since elected officials do not have an "appointing power" that can promulgate guidelines for their activities pursuant to Section 1126. However, if a local agency adopts such guidelines, they can be made applicable to officers and employees subordinate to the legislative body of the local agency, including members of advisory boards and commissions. § 1126(a).

C. Successor Agency and Oversight Board Conflicts

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

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

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

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

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

The Act requires that local government agencies must adopt a conflict of interest code. An exception applies for those agencies where all of its officials and employees are already required to file Statements of Economic Interests as city officials. In the

case of a successor agency, some members of its oversight board will not be city officials or employees. For example, the county, school district, county superintendent, and community college appointees are most likely not going to be current city officials or employees. Consequently, the successor agency must adopt a conflict of interest code that includes the oversight board.

3. City Councils are the Code Reviewing Bodies for the Successor Agency's Conflict of Interest Code

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

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

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

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

The term "filing officer" is defined in the Act to be the office or officer with whom any statement or report is required to be filed under this title. § 82027, Regulation 18115. In determining where Form 700s are to be filed for officials of a successor agency, the city council, as the code reviewing body, may designate whether the "agency" (successor agency) or the "code reviewing body" (city council) is to be the entity with which Form 700s are filed. § 87500(p). Once that designation is made, the duty to perform the functions of filing officer must be delegated to an individual in either entity such as the city clerk, pursuant to Regulation 18227. The person designated becomes the "filing officer." Regulation 18227 provides that every entity with whom forms are filed shall assign to a specific official the responsibility for receiving and forwarding reports filed pursuant to Section 87500 (including Form 700s). Once assigned, the filing officer has a duty to supply Form 700s, review submitted Form 700s for completeness, and notify all persons who have failed to file forms and report violations to appropriate agencies. See § 81010, Regulations 18115, 18115.1, 18115.2.

Thus, the city clerk or the successor agency secretary will most likely be the filing officer for the successor agency but such designation will ultimately be determined by the city council when acting as the code reviewing body for the successor agency's conflict of interest code. In the action to approve the successor agency's conflict of interest code, the city council should approve the successor agency's designation of the city clerk or successor agency secretary to be the filing officer for the successor agency's officials. In the meantime, it is appropriate for the city clerk or successor agency secretary to begin performing the duties of the filing official for the successor agency even though such designation will not be finalized until approved by the city council as the code reviewing body.

It is recommended that one of the first steps for the city clerk or successor agency secretary to undertake is to make a record of the appointment date for each officer of the successor agency and each member of the oversight board. With respect to those officials of the successor agency and oversight board that are not otherwise exempt from filing Assuming Office Form 700s for their position with the successor agency, city clerks should provide forms to those persons and facilitate the filing of those forms within the 30-day time period required. City clerks should be mindful of the more explicit obligations now set forth in Regulations 18104, 18115, 18115.1, and 18115.2.

D. Discount Passes on Common Carriers

Article XII, Section 7 of the California Constitution states:

> "A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission."

The Attorney General has explained this provision applies in the following manner:

- The prohibition applies to public officers, both elected and non-elected, but not employees.
- The prohibition applies to interstate and foreign carriers as well as domestic carriers, and to transportation received outside California.
- The prohibition applies irrespective of whether the pass or discount was provided in connection with personal or public business.
- Violation of the prohibition is punishable by forfeiture of office.

There have only been a few decisions that address this constitutional prohibition. In one opinion, the Attorney General granted leave to sue two members of a city council who accepted free airline tickets to London given by Laker Airlines as part of the airline's promotion of its new Los Angeles to London service. Despite the fact that the council

members were unaware of the prohibition, the Attorney General allowed a quo warranto suit that subsequently settled before judgment. *See, e.g.,* 76 Ops. Cal. Atty. Gen. 1, 3 (1993).

In another opinion, the mayor of a city received an upgrade from a coach seat to a first class seat on Hawaiian Airlines. 76 Ops. Cal. Atty. Gen. 1 (1993). There, the mayor's ticket was one of 20 first-class upgraded tickets that the airline was allowed to provide to "high profile, prominent members of the community." At issue was whether that situation fit within an exception to the constitutional prohibition for situations when the free transportation or discount is provided to a public officer as a member of a larger group unrelated to the official's position. The Attorney General ruled that the facts did not satisfy the exception and that a violation of the prohibition had occurred.

The exception considered in that opinion stemmed out of a 1984 opinion of the Attorney General which held that a public officer could accept first-class ticket upgrades by virtue of the airline's policy to do so for all persons on their honeymoon. In 67 Ops. Cal. Atty. Gen. 81 (1984), the Attorney General concluded that a public officer, whose spouse was a flight attendant, could accept a free transportation pass or discount when such was offered to all spouses of flight attendants without distinction to the official status of the recipient.

Consequently, if the pass or discount is provided to the official because of his or her position as a governmental official, the prohibition applies. If it is provided to the official as a member of a larger group that is not related to the functions of his or her office, the prohibition may not be applicable.

E. Conflicts upon Leaving Office – the "Revolving Door"

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

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

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

prohibition. § 87406.3(d)(1). The type of "legislative action" within the scope of the ban includes:

> "the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in the member or employee's official capacity."

§ 87406.3(d)(2). The lobbying ban does not apply to any public official who is appearing or communicating on behalf of another local governing body or public agency of which the individual is a board member, officer or employee. § 87406.3(b)(1). Therefore, if such former elected city official or former city manager is contacting his or her city on behalf of the state, a county, a school district or some other governmental entity (in his or her capacity as a board member, officer, or employee), such activity is not precluded by the ban. However, the lobbying ban ***does*** apply for the initial year if the former elected city official or former city manager serves another public agency ***as an independent contractor*** and appears or communicates on behalf of that agency in front of the agency that the person originally served. § 87406.3(b)(2). Such activity would be prohibited for the first year after leaving office or employment with the original agency.

Some cities have their own preexisting "revolving door" ordinances that regulate the lobbying activities of their former public officials. This state law expressly does not preempt those ordinances or prevent cities from adopting additional ordinances on the subject in the future, provided those ordinances are more restrictive than the state law. § 87406.3(c). Thus, the law merely sets a minimum standard applicable to all cities.

F. Laws Prohibiting Bribery

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

The Legislature also expressly made bribery of council members and supervising officials a crime, as well as solicitation of bribes by council members and supervisors. Penal

Code § 165. Another statute makes it a crime for anyone to attempt to bribe "any person who may be authorized by law to hear or determine any question or controversy." Penal Code § 92. Considered together, these statutes cover the spectrum of public officials.

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

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

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

G. Campaign Contributions

1. Conflicts of Interests Arising for Elected and Appointed Officials

The Political Reform Act contains restrictions on the receipt and solicitation of campaign contributions. Under a portion of the Act known as the "Levine Act," a public agency official may not participate in decisions affecting individuals or entities who have given the official more than $250 in campaign contributions within the past 12 months. § 84308. This disqualification provision applies to appointed ***and*** local elected officials under new legislation[25] that significantly changed the rules regarding campaign contributions to local elected officials.[26] As of January 1, 2023, a local elected official cannot: (i) solicit, accept or direct a campaign donation over $250 from a party or a participant involved in a matter presently before the local agency and during the 12 months following the final decision; or (ii) participate in a proceeding

[25] Senate Bill ("SB") 1439.

[26] The FPPC determined that the disqualification provision under the Levine Act does not apply retroactively to campaign contributions that local elected officials received in 2022. The Act similarly does not apply retroactively to prohibit local elected officials from accepting campaign donations based on proceedings in 2022. *Kendrick* Advice Letter, No. O-22-002, 2022 WL _____ (2022).

involving a party or a participant from whom the local elected official accepted over $250 within the preceding 12 months. § 84308. Importantly, in addition to now applying to local elected officials, the restrictions in Government Code Section 84308 still apply to planning commissioners and other officers of a public entity who are not directly elected by the voters.

Also, under the new law, an official who receives a prohibited donation may cure the violation depending on when the contribution was received. If a prohibited contribution was received during the 12 months *before* the final decision, then the contribution may be returned within 30 days from the time the official "knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use." Doing so cures the violation and allows the official to participate in the proceeding. Contributions of more than $250 may not be accepted *during* the proceeding and there is no "cure" for that violation. An official who unwillingly or unknowingly receives a contribution during the 12 months *after* the final decision may cure the violation by returning the excess amount "within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest." The official or a controlled campaign committee must also maintain records of curing such violations. § 84308.

The Act classifies campaign contributions differently than other financial interests. As discussed previously, the Act requires that public officials abstain from government decisions in which they have a financial interest, with certain exceptions. § 87100. A public official generally has a proscribed financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on (among other things): (i) a source of income aggregating $500 or more in value during the 12 months prior to the decision; or (ii) a donor of a gift or gifts aggregating $590 or more in value during the 12 months prior to the decision. § 87103(c), (e); Regulations 18700, 18940.2. Campaign contributions, however, are not considered a "financial interest" for purposes of this disqualification because they are neither "income" nor a "gift" within the meaning of the statute. §§ 82028(b)(4), 82030(b)(1). This disqualification therefore is not triggered as a result of a council member's receipt of a campaign contribution.

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

Federal corruption laws apply to situations where the receipt of illegal, laundered or unreported campaign contributions are tied to an official act. In one case arising out of the City of San Diego, two council members were charged and convicted of wire fraud for conspiring to change the city's ordinance regulating adult-oriented businesses in exchange for campaign contributions from an adult-oriented business that had been illegally "laundered" through contributions made by residents of the city or which had been unreported and which constituted bribes. See *United States v. Inzunza*, 303 F. Supp. 2d 1041, 1043 (S.D. Cal. 2004) for a list of the charges; the case was referred to in the press as the San Diego "Strippergate" case. The charges included the alleged use of wire communications in interstate commerce in furtherance of the alleged conspiracy to defraud the public of their intangible right to honest service, in violation of 18 U.S.C. §§ 1951 (the Hobbs Act) and 1952 (Interstate Transportation in Aid of

Racketeering). One of those convictions was later overturned. However, the case points out that direct connections between official acts and illegal or unreported campaign contributions may result in charges of bribery under California law and a violation of certain federal wire fraud and racketeering laws.

3. Ban on Local Agency Officials and Employees Soliciting Campaign Contributions from Officials and Employees of the Same Agency

In an effort to avoid local agency public employees being drawn into local political campaigns or having their positions become the subject of political reward or retribution, California law contains a prohibition on the solicitation of campaign contributions by a local agency official or employee of other officials or employees within the same local agency. Section 3205 prohibits an officer or employee of a local agency from soliciting political contributions from an officer or employee of that same local agency. The prohibition applies to incumbents seeking re-election and to non-incumbent candidates for local agency office. An exception exists for broad general public solicitations to a "significant segment of the public" that also include some local agency officials and employees of that agency. § 3205(c). No definition exists as to what constitutes a significant segment of the public. In the context of conflict of interest provisions in the Political Reform Act, that term now is defined to include segments of the local agency population such as 25 percent of all individuals within an official's jurisdiction (Regulation 18703), and, in the absence of any court interpretation of the law, that standard provides some guidance on what may be a sufficiently broad solicitation to come within the scope of the exception. Violation of the prohibition is punishable as a misdemeanor and may be prosecuted only by the County District Attorney. § 3205(d).

4. Nepotism

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

With respect to adult children and more extended family members, the Political Reform Act and Section 1090 would not automatically apply in the absence of some financial relationship between the public official and the adult child or extended family

members.[27] Currently, state law only prohibits such "extended family" interests for the governing boards of school districts. Educ. Code § 35107(e). Under that statute, a school board member must abstain from participating in personnel matters that uniquely affect his or her relative. "Relative" is defined as an adult who is related to the official by blood or affinity within the third degree, or in an adoptive relationship within the third degree. There is no comparable statute for cities and counties, but some local governments have established similar restrictions through ordinances or policies.

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

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

- For business reasons of supervision, safety, security or morale, an employer may refuse to place one spouse under the direct supervision of the other spouse.

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

2 C.C.R. § 11057(a) (emphasis added).

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

[27] *Davies* Advice Letter, No. I-90-329, 1990 WL 698051 (1990).

III. LAWS AND REGULATIONS AFFECTING RECEIPT OF GIFTS, HONORARIA AND LOANS

The PRA provisions and other conflict of interest laws discussed above do not prohibit a public official from having an interest in a business or real property. Instead, they merely limit the official's ability to participate in governmental decisions that would materially affect those interests.

There are additional restrictions in the PRA, however, with regard to certain gifts, honoraria and loans. The statute precludes local officials (including council members and planning commissioners) from receiving certain gifts, honoraria and loans. These prohibitions apply whether or not the source of the gift, honorarium or loan is or will ever be affected by a decision of the official's agency. This section outlines these prohibitions.

A. Limitations on Receipt of Gifts

1. General Gift Limitation

Government Code Section 89503(a) provides: "No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than [$590]." (The gift limit amount has been adjusted in accordance with Regulation 18940.2.) Officials listed in Section 87200, in turn, include mayors, council members, planning commissioners, city managers, city attorneys, city treasurers, chief administrative officers and other public officials who manage public investments, and candidates for any of these offices.

A similar limitation prohibits a city employee designated in a local conflict of interest code from accepting gifts from a single source totaling more than $590 in value in any calendar year, if the gifts would be required to be reported on his or her statement of economic interests. § 89503(c).

2. Biennial Gift Limit Adjustment

The Act authorizes the FPPC to make an inflationary adjustment of the gift limitations set forth in Section 89503 every two years. § 89503(f). The most recent adjustment became effective on January 1, 2023, wherein the gift limit increased to $590. Regulation 18940.2. This figure will be further adjusted in future odd-numbered years.

3. Exceptions to Gifts

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

a. Informational Materials

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

b. Returned Gifts

Except for passes and tickets as provided for in Regulation 18946.1 that must be ultimately used or transferred to have value, a gift that is not used and that, within 30 days of receipt, is returned, donated, or for which reimbursement is paid pursuant to Regulation 18941, is not a gift. Regulation 18942(a)(2). First, an unused gift returned to the donor, the donor's agent, or the donor's intermediary for which the returning party does not receive anything of value in exchange for the returned payment, does not constitute a gift. Regulation 18941(c)(1). Next, an unused donation of a gift under this exception must be to either a 501(c)(3) charitable organization with which the official or a member of his or her family holds no position or to a government agency, without being claimed as a tax deduction, also does not constitute a gift. Regulation 18941(c)(2). Lastly, a gift fully reimbursed to the donor, agent, or intermediary from the recipient official is not a gift, but a partial reimbursement will result in a reduced gift amount. Regulation 18941(c)(3).

c. Family Gifts

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

d. Campaign Contributions

Campaign contributions that are reported in accordance with separate provisions of the Act are not considered gifts. Regulation 18942(a)(4).

e. Inherited Money or Property

Devises or inheritances of any kind are not considered gifts. Regulation 18942(a)(5).

f. Awards

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

g. Home Hospitality

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

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

In determining where this exception is available, the official is to presume that the cost of the hospitality is paid by the host unless the host discloses to the official or it is clear from the surrounding circumstances that someone other than the host paid the cost or part of the cost of the hospitality. Regulation 18942(a)(7). The cost of providing hospitality must also not include any part of the value or rental cost of the home nor any depreciation value on the home where the hospitality is extended for the exception to apply. *Id.*

h. Presents on Personal or Family Occasions

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

i. Reciprocal Exchanges

Reciprocal exchanges made in a social relationship between an official and another individual who is not a lobbyist and with whom the official participates in repeated social events are not gifts where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities. The repeated social events may include lunches, dinners, rounds of golf, attendance at entertainment or sporting events, or any other such event so long as the total value of payments received by the official within the year is not substantially disproportionate to the amount paid by the official. If the official receives much more than what he or she paid, the official has received a gift for the excess amount. This exception does not apply to any single payment that is equal to or greater than $590. Regulation 18942(a)(8)(B).

j. Leave Credits Donated to an Official

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

k. Disaster Assistance

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

l. Admission when "Speech" Made

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

m. Campaign Travel

The payments made to an elected officer or candidate for his or her transportation, lodging, or subsistence provided in direct connection with campaign activities, including attendance at political fundraisers, are exempt from the gift limitations. Payments made during the six-month period prior to an election are considered "in direct connection" with the campaign activities if the payment is for necessary transportation, lodging, or subsistence and used for the officer's or candidate's participation in forums, debates or other speaking events or attendance at campaign strategy meetings with staff or consultants. Beyond this six-month period, the payment

is considered a gift unless it is clear from the surrounding circumstances that the payment was made directly in connection with campaign activities. Regulations 18942(a)(12), 18950.3.

n. Ticket for Ceremonial Role

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

o. Prize or Award in Bona Fide Contest or Competition

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

p. Weddings Benefits

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

q. Bereavement Offerings

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

r. Acts of Neighborliness

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

s. Bona Fide Date or Dating Relationship

Personal benefits commonly exchanged between people on a date or in a dating relationship are not gifts. However, such benefits are gifts if the individual providing the benefit to the official is a lobbyist or otherwise has particular interests in the official's role in the agency within 12 months of the date. Even if the benefit is from such an individual, the gift is still not reportable or subject to limits but the aggregate value is subject to the conflict of interest provisions if the value is $590 or greater. Regulation 18942(a)(18)(A).

t. Acts of Human Compassion

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

u. Best Friends Forever

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

v. Catch-All

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

4. Gifts to an Agency

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

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

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

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

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

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

5. Gifts to an Official's Family

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

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

- The child is at least 18 but no more than 23 years old and is a full-time or part-time student;
- The child has the same principal residence as the official. For purposes of this provision, a place, located away from the official's residence, at which the child resides for the purpose of attending school is not the child's "principal place of residence"; and
- The child does not provide more than one-half of his or her own support.

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

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

- The donor is a lobbyist, lobbying firm, lobbyist employer, or other similar person and is registered to lobby the official's state agency;
- The donor is involved in an action or decision before the local or state government agency in which the official will reasonably foreseeably participate, or in an action in which he or she has participated within the last 12 months; or
- The donor has a contract with the official's agency or the donor engages in a business that regularly seeks contracts with, or licenses, permits or other entitlements from, and the official may reasonably foreseeably make or participate in such a decision or has participated in such a decision within 12 months of the time the gift is made, unless the donor has less than 10 percent interest in the business contracting with or appearing before the agency.

6. Invitation-Only Events

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

a. Official or Ceremonial Functions

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

b. Drop-In Visit

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

c. Lobbyists, Lobbying Firms, and Lobbyist Employers

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

7. Tickets to Political and Charitable Fundraisers

Regulation 18946.4 provides special rules for tickets provided to public officials to fundraisers for nonprofit and political organizations. Such tickets are not considered

gifts to a public official if certain requirements are met. This exception applies only to two tickets provided to an official, and only if it is provided directly by the charity or campaign committee; additional tickets are treated as gifts. The requirements vary depending on whether the organization is a 501(c)(3) nonprofit, a non-501(c)(3) nonprofit, or a political organization.

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

Regulation 18946.4(a) provides that a ticket to a fundraising event for a nonprofit, tax-exempt organization that is neither a political campaign committee nor a 501(c)(3) nonprofit shall be valued as follows:

- Where the ticket to the fundraiser clearly states that a portion of the ticket price is a donation to the organization, or the organization provides information indicating the portion of the admission price that constitutes the donation, then the value of the gift is the face value of the ticket or admission reduced by the amount of the donation – i.e., the "nondeductible portion" of the price of admission.

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

b. Fundraiser for a 501(c)(3) Religious, Charitable, Scientific, Literary or Educational Organization

Where the event is a fundraising event for an organization exempt from taxation under Internal Revenue Code Section 501(c)(3), such an organization may provide two tickets per event to an official, and the ticket shall have no value. Regulation 18946.4(b). Any additional tickets or admissions provided by the 501(c)(3) organization, any tickets provided to or controlled by the official, and any tickets not provided directly by the 501(c)(3) are valued as tickets from a non-501(c)(3) nonprofit. Regulation 18946.4(b).

c. Political Fundraiser

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

or more in a calendar year, or makes contributions totaling ten thousand dollars ($10,000) or more in a calendar year to or at the behest of candidates or committees. § 82013.

8. Tickets or Passes to Events Given to Officials by their Agency

a. Gift Exception

FPPC Regulation 18944.1 provides that a ticket or pass to an event or function provided to an official by his or her agency and distributed and used in accordance with a written policy adopted by the agency is not a gift under the Political Reform Act if: (1) the ticket or pass is not earmarked by an outside source for use by a specific agency official; (2) the agency determines, in its sole discretion, who uses the ticket or pass; (3) the distribution of the ticket or pass is reported on Form 802 as described below; and (4) the distribution of the ticket or pass by the agency is made in accordance with a written policy adopted by the agency that meets all of the requirements as described below. Regulation 18944.1(a).

- **Application**: FPPC Regulation 18944.1 applies only to the benefits the official receives from a ticket or pass to an event or function that are provided to all members of the public with the same class of ticket or pass, when the ticket or pass is provided by an agency to an official of the agency, or at the behest of an agency official. The regulation does not apply to: (1) an admission to an event or function in which the official performs a ceremonial role; or, (2) admission provided to a school, college or university district official, coach, athletic director or employee to attend an amateur event performed by students, which are neither gifts nor income. Regulation 18944.1(f).

b. Written Policy for Distribution of Tickets.

- **Policy Requirements**: The distribution of tickets and passes described above must be made pursuant to a written policy duly adopted by the agency's legislative or governing body that must contain the following: (1) a provision setting forth the public purposes of the agency for which tickets or passes may be distributed; (2) a provision requiring that the distribution of any ticket or pass to, or at the behest of, an official accomplish a stated public purpose of the agency; (3) a provision prohibiting the transfer of any ticket received by an agency official, except to his or her immediate family or no more than one guest solely for their attendance at the event; and (4) a provision prohibiting the disproportionate use of tickets or passes by a member of the governing body, chief administrative officer, political appointee, or department head. Regulation 18944.1(b).

- **Public Purpose**: The agency's legislative or governing body must determine whether the distribution of tickets or passes serves a legitimate public purpose of the agency, consistent with state law. Tickets or passes

given to officials (other than a member of the governing body, chief administrative officer, political appointee or department head) to support general employee morale, retention or to reward public service is deemed to have a public purpose. Regulation 18944.1(e).

- **Public Record**: The policy must be maintained as a public record, subject to inspection and copying. The agency must post the policy on the agency website within 30 days of adoption or amendment and send to the FPPC, by email, the agency's website link that displays the policy for posting on the FPPC's website. Regulation 18944.1(c).

c. Form 802 for Reporting Distribution of Tickets and Passes.

Within 45 days of distributing a ticket or pass, the head of the agency must fill out and certify a Form 802 describing the distribution of tickets or passes to an official. The Form 802 requires: (1) the name of the official who received the ticket or pass, (2) a description and date of the event, (3) the fair value of each ticket or pass, (4) the number of tickets or passes distributed to the official, (5) if the ticket or pass is behested, the name of the official who behested the ticket, (6) if the official gave the ticket or pass to another person (limited to an immediate family member or no more than one guest), the name of that person, (7) the specific public purpose under which the distribution was made, and (8) a written inspection report of findings and recommendations by the official who received the ticket or pass if it was received for the oversight or inspection of facilities. This form must be maintained as a public record, subject to inspection and copying. The agency must post the form, or a summary of its contents, on its website and send the FPPC, by email, the agency's website link for posting on the FPPC's website. Regulation 18944.1(d).

d. Other Exceptions.

- **Reimbursement**. The ticket or pass is not considered a gift if the official reimburses the agency for the ticket within 30 days of receipt. Regulation 18944.1(h).

- **Treated as Income**. The ticket or pass is not considered a gift if the official treats the ticket or pass as taxable income. Regulation 18944.1(g).

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

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

Several commentators have questioned the need or usefulness of this regulation because a public agency is already prohibited from making a payment that is not a "lawful expenditure of public moneys." Boiled down, the regulation states that it is illegal for an agency to give a gift unless the gift is legal. Until the FPPC issues some

formal opinions or advice letters clarifying the regulation, or revises the text, its immediate application is unclear.

10. Wedding Gifts

The value to an official of a wedding gift given to an official and his or her spouse or spouse-to-be is one-half of the gift's total value. Regulation 18946.3. This is an exception to the general rule, described above in "Gifts to an Official's Family," that a single gift to both an official and one or more members of the official's family is a gift to the official for the full value of the gift. The value of a wedding gift may exceed the gift limit, currently set at $590. Regulation 18942(b)(2).

11. Certain Gifts of Travel

Payments for travel for a public official are generally subject to the annual gift limit, unless the payment is otherwise exempt. FPPC regulations define a "payment for travel" as "any payment that provides transportation to an official from one location to another location as well as a payment for lodging and food connected with the travel." Regulation 18950(b).

For reporting purposes, payments of air travel are valued in accordance with FPPC regulation 18946.5, as follows. Air travel is valued as the price the carrier charges the public for the same class seat on the flight provided to the official in the case of a commercial flight. The value of all other air transportation is the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, divided by the number of passengers aboard the flight.

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

a. Travel Payments Related to Speeches that Serve a Governmental Purpose

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

b. Travel Payments Related to a Governmental Purpose Made by Government Agencies and Certain Non-Profits

Section 89506(a)(2) exempts from the gift limit any payments, advances, and reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if provided by a governmental agency, a 501(c)(3)

nonprofit,[28] and a few other limited organizations/persons. § 89506(a)(2). These types of payments for travel are generally not subject to the gift limit, but they must still be reported on a public official's Form 700. § 89506(a)(2); Regulation 18950(a). However, Section 89506(f)(3) now clarifies that if a nonprofit is acting as an intermediary or agent of a donor, then the $590 gift limitation would apply and the original donor must be listed as the source of the gift to the official, as well as considered a financial interest for the purpose of conflicts analysis. § 89506(f)(3).

c. Travel for Education, Training, or Intra-Agency Purposes

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

d. Travel in a Vehicle or Plane Owned by Another Official or Agency

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

e. Travel Made in Conjunction with Official Agency Business

Regulation 18950.1 provides an exception for travel payments that do not confer a personal benefit on an official, when made by sources other than local, state, or federal agencies, are for the purpose of facilitating the public's business, and are therefore not gifts or income because the payment is made for an official agency purpose in lieu of using agency funds. This exemption applies only to travel payments that meet all of the following requirements:

(1) The payment is made directly to or coordinated with the government employer and not made to the employee using the travel;

(2) The payment is used for official agency business;

(3) The government employer determines which official will use the payment for travel;

(4) The payment provides no personal benefit to the official who uses the payment;

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

(5) The duration of travel is limited to that necessary to accomplish the purposes for which the travel was provided; and

(6) The government employer reports the payment, as specified below.

The first requirement above – that the payment is made directly to or coordinated with the government employer – is satisfied if the payment is made directly to the government employer or by arranging with the government employer any payments for transportation and lodging that are made directly to the provider of those services. Food may be accepted for attendance at an event where food is provided as part of the admission to the event. All other payments for food must be made to the government employer pursuant to the employer's per diem travel policy. Regulation 18950.1(b).

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

- The payment is made pursuant to a provision in a contract requiring the contracting party to pay any expenses associated with any required governmental travel resulting from the government agency's participation in the contract and the payment is used for that purpose;

- The payment is made for the travel expenses of an official for the purpose of performing a regulatory inspection or auditing function that the governmental employer is mandated to perform;

- The payment is made for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental employer's functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members;

- The payment is made for the travel expenses of an official to an educational conference directly related to the governmental employer's functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event;

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

- The payment is made for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group meeting under his

or her officially assigned job duties and the agency is authorized to provide an official to attend the meeting; or

- The payment is for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially enhance an official's knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase of the product pursuant to the jurisdictional authority of the official's governmental employer. Regulation 18950.1(c).

The third requirement is satisfied if the governmental employer selects the official who will make use of the payment. However, if the payment is for expenses related to an oral presentation to either provide training on a subject on which the governmental employer provides training, or discuss policy and direction in implementing the functions of the governmental employer, the donor may request the official who is most qualified to make the presentation. Regulation 18950.1(d).

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

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

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

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

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

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

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

f. Travel in Connection with Bona Fide Business

The FPPC regulations reiterate the general rule in Government Code Section 89506(d)(3), whereby a payment for transportation, lodging, or food, made in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Internal Revenue Code Sections 162 and 274, is not an honorarium or gift, unless the sole or predominant activity of the business, trade, or profession is making speeches. Regulation 18950.2.

g. Travel Paid from Campaign Funds

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

12. Lobbyists Arranging Gifts

A lobbyist or lobbying firm may not make gifts[29] to one person aggregating more than ten dollars ($10) in a calendar month, act as an agent or intermediary in the making of any gift, or arrange for the making of any gift by any other person. § 86203. It is likewise unlawful for any person to knowingly receive any such prohibited gift. § 86204.

A lobbyist "arranges for the making of a gift" within the meaning of Government Code Section 86203 if the lobbyist does any of the following either directly or through an agent:

- Delivers a gift to the recipient.
- Acts as the representative of the donor, if the donor is not present at the occasion of a gift, excepting a situation where the lobbyist accompanies the recipient to an event where the donor will be present.
- Invites or sends an invitation to an intended recipient regarding the occasion of a gift.
- Solicits responses from an intended recipient concerning the lobbyist's attendance or nonattendance at the occasion of a gift.

[29] Government Code Section 86201 provides that a "gift" for purposes of this section is a "gift made directly or indirectly to any state candidate, elected state officer, or legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist."

- Is the donor's designated representative to receive responses from an intended recipient concerning the lobbyist's attendance or nonattendance at the occasion of a gift.

- Acts as an intermediary in connection with the reimbursement of a recipient's expenses.

Regulation 18624. On the other hand, a lobbyist does not "arrange for the making of a gift" if the lobbyist, either directly or through an agent, solely recommends or provides information to the lobbyist's employer, "including information obtained from a third party for that purpose," regarding gifts to a public official. *Id.*

B. Prohibitions on Receipt of Honoraria

Government Code Section 89502 provides that an elected officer of a local government agency and any official listed in Section 87200 shall not accept an honorarium. This prohibition also applies to candidates for elective office in a local government agency. § 89502(b). An "honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. § 89501.

1. Exceptions to the Prohibition on Honoraria

a. Earned Income Exception

"Honorarium" does not include income earned for personal services if:

- The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting; and

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

Regulation 18932.

b. Informational Materials

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

c. Family Payments

"Honorarium" does not include a payment received from one's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such person. However, a payment from any such person is an honorarium if the donor is acting as an agent or intermediary for any person not listed in this paragraph. Regulation 18932.4(b).

d. Campaign Contributions

"Honorarium" does not include a campaign contribution that is required to be reported. Regulation 18932.4(c).

e. Personalized Plaque or Trophy

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

f. Admission and Incidentals at Place of Speech

"Honorarium" does not include free admission, refreshments and similar non-cash nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. Regulation 18932.4(e).

g. Incidentals at Private Conference

Likewise, "honorarium" does not include any of the following items, when provided to an individual who attends any public or private conference, convention, meeting, social event, meal, or like gathering without providing any substantive service:

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

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

h. Travel that Is Exempt from Gifts

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

C. Prohibitions on Receipt of Certain Types of Loans

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

Elected officials and other city officials specified in Section 87200, including council members, may not receive a personal loan that exceeds $250 at any given time from an officer, employee, member, or consultant of their city or any local government agency over which their city exercises direction and control. § 87460(a), (b). In addition, elected officials and other city officials specified in Section 87200 may not receive a personal loan that exceeds $250 at any given time from any individual or entity that has a contract with their city or any agency over which their city exercises direction and control. § 87460(c), (d).

2. Requirement for Loans of $500 or More from Other Persons and Entities to be in Writing

Elected local officials may not receive a personal loan of $500 or more unless the loan is made in writing and clearly states the terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan document must also include the date or dates when payments are due and the amount of the payments. § 87461(a).

3. Exceptions to Loan Limits and Documentation Requirements

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

- Loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to official status. Regulation 18730.

- Loans received by an elected officer's or candidate's campaign committee. § 87461(b)(1).

- Loans received from the elected or appointed official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption. § 87461(b)(2)

- Loans made, or offered in writing, prior to January 1, 1998. § 87461(b)(3)

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

Under the following circumstances, as stated in Government Code Section 87462, a personal loan received by any public official (elected and other officials specified in Section 87200, as well as any other local government official or employee required to file a Statement of Economic Interests) may become a gift and subject to gift and reporting limitations:

- If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.

- If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of: the date the loan was made; the date the last payment of $100 or more was made on the loan; or the date upon which the official has made payments aggregating to less than $250 during the previous 12-month period.

5. Exceptions – Loans that Do Not Become Gifts

The following loans will not become gifts to an official:

- A loan made to an elected officer's or candidate's campaign committee.

- A loan on which the creditor has taken reasonable action to collect the balance due.

- A loan described above on which the creditor, based on reasonable business considerations, has not undertaken collection action. (However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)

- A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

- A loan that would not be considered a gift as outlined in paragraph 3 above (e.g., loans from family members). § 87462(b).

IV. PROHIBITION AGAINST MASS MAILINGS

The Political Reform Act also prohibits the sending of newsletters and other so-called "mass mailings" at public expense. §§ 89001, 89002.[30] A "mass mailing" is defined as the mailing or distribution at public expense of 200 or more items within a calendar month featuring the name, office, photograph or other reference to an elected officer of the agency. § 82041.5. The Government Code also prohibits a mass mailing from being sent within the 60 days preceding an election by or on behalf of a candidate whose name appears on the ballot. § 89003. The underlying intent of the Government Code provision and the implementing FPPC Regulation is to preclude elected officials from using public agency newsletters as indirect campaign flyers for themselves. The law and regulations are intended to clamp down on prior abuses of newsletters so that elected officials cannot use publicly funded newsletters to bolster their name or accomplishments while in office.

A. Test for Prohibited Mass Mailing

The FPPC regulations previously included a four prong test to determine the legality of mass mailings. Under the statutory text, which now incorporates the requirements from the prior regulation, a mass mailing is prohibited if each of the following elements is present:

- It includes the delivery of a tangible item;
- It "features" an elected officer, or includes a reference to, an elected officer and is sent in cooperation with the elected officer;
- It is sent at public expense; and
- A quantity of more than 200 substantially similar items are sent in a single calendar month.

§ 89002. Most public agencies that publish newsletters attempt to avoid the prohibition by ensuring that the newsletter does not meet the second element of the test. Each of the four elements is discussed in numerical order below.

1. Delivery of Tangible Item

First, a court will determine whether any "item sent is delivered, by any means, to the recipient at the recipient's residence, place of employment or business, or post office box. The item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document." § 89002(a)(1). This means that if a city intends to deliver a written document, such as a city newsletter, by U.S. mail or by hand to residents or businesses, this element is satisfied.

[30] Section 89002 incorporates Regulation 18901 into the statutory language to clarify the circumstances when a mailing would be prohibited by the general rule in Section 89001 and to identify certain situations when the prohibition would not apply. The FPPC has repealed Regulation 18901 now that the statute includes the same text.

2. Features or Includes Reference to an Elected Official

The second part of the test is the most important and requires that the item sent either:

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

§ 89002(a)(2). The term "features an elected officer" is defined to mean that "the item mailed includes the elected officer's photograph or signature or singles out the elected officer by the manner of display of the elected officer's name or office in the layout of the document, such as by headlines, captions, type size, type face, or type color." § 89002(c)(2). And the term "elected officer affiliated with the agency" in this manner means "an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency or appoints one or more members of the agency." § 89002(c)(1).

This means that if the written document includes the photograph of a council member, even if it just shows the council member cutting a ribbon on a civic project or giving out a plaque to a member of the community, this element would be satisfied. It also precludes articles about an elected city official or articles in which they are "singled out" for discussion or reference.

The other way this second part of the mass mailing test can be satisfied is if an elected city official's "name, office, photograph, or other reference" is included in a written document and the document, or any part of it "is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer." This restriction presents elected officials with a choice. If the elected official involves him or herself in the preparation of the document, then even the official's name is excluded from appearing in the document pursuant to this second subpart. If, on the other hand, the elected official does not involve him or herself in the preparation of the document, his or her name may appear in the document, but not in a way that it is "featured" by way of headlines, captions, type size, type face, or type color.

3. Public Expense

The third part of the test is whether:

- Any of the costs of distribution are paid for with public money, or
- Costs of design, production, and printing exceeding $50 are paid with public money, and the design, production, or printing is done with the intent of sending the item other than as permitted by the statute.

§ 89002(a)(3). This part of the test precludes the city from either paying the costs of mailing a mass mailing, or paying more than $50 of the cost of having it produced if another person or entity pays for the cost of distributing the mailing.

4. More than 200 Copies of the Item

The fourth and final element of the test to determine whether a mass mailing is prohibited is whether "[m]ore than 200 substantially similar items are sent in a single calendar month, excluding any item sent in response to an unsolicited request…." § 89002(a)(4). This means that if more than 200 copies of the same written document, such as a city newsletter, are sent to the public in the same month, this element will be satisfied, with minor exceptions discussed below.

A city newsletter is particularly prone to violating the mass mailing proscriptions, especially the first, third and fourth elements of the test. The key to a lawful newsletter is to ensure that each issue of the newsletter fully avoids meeting the criteria of the second element of the test. This means that the newsletter cannot "feature" an elected city official and cannot include an elected official's name or reference if that official participates in the preparation of the newsletter, as discussed above. For example, many cities issue proclamations and awards at council meetings, and it is customary for an honoree to be photographed with the mayor. In order to comply with the mass mailing restrictions, the cities take two photographs: one of the honoree shaking the mayor's hand, for distribution to non-city publications such as a local newspaper, and one of the honoree standing alone, for publication in the city newsletter.

B. Exceptions to the Mass Mailing Prohibition

The statute now contains a list of certain types of documents that are exempt from the prohibition of mass mailings. The first of these documents is a letter on city letterhead where the elected official's name only appears in the letterhead along with a list of all other elected officers of the city and the letter does not contain other references to the elected official. § 89002(b)(1). Under this exemption, a non-elected official, such as the city manager, may send a letter on city letterhead at city expense to members of the community but an elected officer, such as the mayor, cannot do the same because the signature on the letter will be considered a separate reference to the elected official. If a letter signed by the mayor is to be sent to the community, a private individual or group would have to pay for the cost of producing and sending that letter.

Other exemptions include press releases to the media, inter-agency communications, intra-agency communications, tax statements and bills, telephone directories, limited meeting or event announcements, and meeting agendas. § 89002(b). All of these items are subject to their own specific limitations, as set forth in the statutory text.

V. EXPENDITURES TO SUPPORT OR DEFEAT A BALLOT MEASURE

A local government may not spend public funds to assist with the passage or defeat of an initiative or other ballot measure or to contribute to a campaign for or against a candidate. § 54964. Public monies may not be spent on commercials, announcements, banners or any other promotional materials. This is based on the theory that it would be unfair to voters with opposing views to use public funds in this way. The prohibition also serves to prevent elected officials from using government funds to promote themselves or their allies in office. *Stanson v. Mott*, 17 Cal. 3d 206, 217 (1976); *League of Women Voters v. County-Wide Criminal Justice Coordinating Comm'n*, 203 Cal. App. 3d 529 (1988). However, this section does not prohibit the expenditure of city funds to provide information to the public about the possible effects of the ballot measure on the activities, operations, or policies of the city, as long as these activities are otherwise allowed under California law, and the information is factual, accurate, fair, and impartial. § 54964(c).

The leading California case setting forth the basic rule with respect to government involvement in political campaigns is *Stanson v. Mott*, 17 Cal. 3d 206 (1976). In *Stanson*, the California Supreme Court addressed the question of whether the State Director of Beaches and Parks was authorized to expend public funds in support of certain state bond measures for the enhancement of state and local recreational facilities. The court concluded that the Director lacked such authority and set forth the basic rule that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign." *Id.* at 209-210. Only impartial "informational" communications would be permissible, such as a fair presentation of the facts in response to a citizen's request for information.

The *Stanson* court also recognized that the line between improper "campaign" expenditures and proper "informational" activities is not always clear. "[T]he determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor, and timing of the publication; no hard and fast rule governs every case." *Id.* at 221-222. The *Stanson* test was reaffirmed by the California Supreme Court in *Vargas v. City of Salinas*, 46 Cal. 4th 1 (2009).

Prior to *Vargas*, courts attempting to interpret and apply *Stanson* used varying tests to determine the permissibility of expenditures. For example, in *California Common Cause v. Duffy*, an appellate court held that a local sheriff's use of public facilities and personnel to distribute postcards critical of then-Supreme Court Justice Rose Bird was "political" and not "informational" as permitted by *Stanson* because the cards presented only one side of Justice Bird's fitness to be retained in office. 200 Cal. App. 3d 730, 747-748 (1987). In another appellate decision, *Schroeder v. City Council of Irvine*, the court upheld Irvine's "Vote 2000" Program. 97 Cal. App. 4th 174 (2002). The program encouraged voter registration, without specifically advocating a particular position on any measure. Although the city had taken a public position in favor of the

proposed ballot measure, the materials it distributed did not advocate any particular vote on the measure and rarely mentioned the measure at all. The *Schroeder* court held that the funds spent on the Vote 2000 Program would be political expenditures and unlawful under *Stanson* only if the communications expressly advocated, or taken as a whole unambiguously urged, the passage or defeat of the measure. Because the city presented a neutral position on "Measure F," at least in the campaign materials, the court upheld the program as valid.

However, in *Vargas v. City of Salinas*, the California Supreme Court decided that "express advocacy" is an insufficient standard. In *Vargas*, proponents of a local ballot initiative to repeal the city's utility users tax ("Measure O") sued the city alleging improper government expenditures, the court held that even if a communication does not expressly advocate for either side of an issue, a *Stanson* analysis must nonetheless be conducted to determine whether the activity was for informational or campaigning purposes based on its style, tenor, and timing. Although the court did not specifically refer to the *Schroeder* analysis in its opinion, the court clearly stated that the "express advocacy" standard does not meaningfully address potential constitutional problems arising from the use of public funds for campaign activities that were identified in *Stanson*. Thus, local governments must look to *Vargas* rather than *Schroeder* for the proper standard to evaluate whether an expenditure is permissible.

A variety of factors led to the *Vargas* court's conclusion that the communications were informational, including the fact that the publications avoided argumentative or inflammatory rhetoric and did not urge citizens to vote in a particular manner. The challenged expenditures were made pursuant to general appropriations in the city's regular annual budget pertaining to the maintenance of the city's website, the publication of the city's regular quarterly newsletter, and the ordinary provision of information to the public regarding the city's operations. The Supreme Court found that in posting on the city's website the minutes of city council meetings relating to the council's action along with reports prepared by various municipal departments and presented by officials at city council meetings, the city engaged in informational rather than campaign activity. Similarly, the city did not engage in campaign activity in producing a one-page document listing the program reductions that the city council voted to implement should Measure O be approved, or in making copies of the document available to the public at the city clerk's office and public libraries. The court reasoned that viewed from the perspective of an objective observer, the document clearly constituted an informational statement that merely advised the public of specific plans that the city council voted to implement should Measure O be approved.

Finally, the court found that the city engaged in permissible informational activity by mailing to city residents the fall 2002 "City Round-Up" newsletter containing articles describing proposed reductions in city services. Although under some circumstances the mailing of material relating to a ballot measure to a large number of voters shortly before an upcoming election would constitute campaign activity, a number of factors supported the court's conclusion that the mailing of the newsletter constituted informational rather than campaign activity: it was a regular edition of the newsletter that was mailed to all city residents as a general practice, the style and tenor of the

publication was entirely consistent with an ordinary municipal newsletter and readily distinguishable from traditional campaign material, and the article provided residents with important information about the tax in an objective and nonpartisan manner.

The Supreme Court illustrated the insufficiency of the "express advocacy" standard by suggesting that if the city were to post billboards throughout the city prior to an election stating, "IF MEASURE O IS APPROVED, SIX RECREATION CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE," it would defy common sense to suggest that the city had not engaged in campaign activity even though such advertisements would not have violated the express advocacy standard. *Vargas v. City of Salinas*, 46 Cal. 4th 1, 32 (2009).

Vargas and *Stanson* reflect that local agencies must exercise caution when communicating to voters about local measures. Unfortunately, there is no hard and fast rule to assist public officials in distinguishing improper partisan campaign expenditures from permissible expenditures for "informational activities." Whether a communication is permissible will be based on a combination of these factors, and public officials should therefore seek the advice of the city attorney on a case-by-case basis. Assistance may also be obtained from the FPPC.

Last, public officials should also be aware of a fairly new mass mailing rule that regulates communications pertaining to candidates and ballot measures. In 2009, the FPPC adopted a new regulation to prohibit government agencies from paying for mass mailings that expressly advocate or "unambiguously urge" a particular result in an election. Regulation 18901.1 prohibits a mailing if all of the following criteria are met:

- A delivery of a tangible item such as a written document, video tape, record, or button and is delivered to the recipient at his or her residence, place of employment or business, or post office box;

- The item sent expressly advocates or unambiguously urges a particular result in an election;

- The public agency (1) pays to distribute the item or (2) pays costs, exceeding $50, reasonably related to designing, producing, printing or formulating the content of the item including, but not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, or consultants with the intention of sending the item; and

- More than 200 substantially similar items are sent during the course of the election including items sent during the qualification drive or in anticipation of an upcoming election.

A mailing "unambiguously urges a particular result in an election" if the communication can be reasonably characterized as campaign material or activity and is not a fair presentation of facts serving only an informational purpose when taking into account the style, tenor, and timing of the communication.

There are exceptions to this rule, and the following are not considered campaign related mass mailings: (1) an agency report providing the agency's internal evaluation of a measure sent to a member of the public upon the individual's request; (2) a written argument sent to a voter in the voter information pamphlet; and (3) a communication clearly and unambiguously authorized by law. Regulation 18901.1(b). Essentially, this regulation utilizes the standards articulated by the Supreme Court in the *Vargas* case and provides that communications that violate those standards are prohibited mass mailings.

VI. PROHIBITION ON GIFTS OF PUBLIC FUNDS

Article XVI, Section 6 of the California Constitution prohibits state and local governments from making gifts of public funds or property. A transfer of property without consideration is a gift. Civ. Code § 1146. However, where property is transferred for a "public purpose," it will not be considered a gift of public funds. There, "the benefit to the [government] from an expenditure for a 'public purpose' is in the nature of consideration and the funds expended are therefore not a gift even though private persons are benefited therefrom." 69 Ops. Cal. Att'y Gen. 168 (1986) (citing *California Employment Stabilization Comm'n v. Payne*, 31 Cal. 2d 210, 216 (1947); *Alameda County v. Janssen*, 16 Cal. 2d 276, 281 (1940)).

In determining whether a legislative body has made a gift of public funds, courts will look first at "whether the money is to be used for a public or a private purpose." *City of Oakland v. Garrison*, 194 Cal. 298, 302 (1941). "If it is for a public purpose within the jurisdiction of the appropriating board or body, it is not, generally speaking, to be regarded as a gift." *Id.* As the California Court of Appeal explained in *Board of Supervisors v. Dolan*, it is settled that if a public purpose is served by the expenditure of public funds, the constitutional prohibition is not violated "even though there may be incidental benefits to private persons." 45 Cal. App. 3d 237, 243 (1975). However, to avoid violating the constitutional prohibition, public financial assistance must be tailored or "directly related" to a public purpose. *California Housing Finance Authority v. Elliott*, 17 Cal. 3d 575 (1976). Thus, financial assistance that does not directly further the proffered public purpose may still be found to be unconstitutional.

Courts defer to the legislative body's determination of what constitutes a "public purpose." The concept of public purpose has been liberally construed by the courts, and a city council's determination of public purpose will be upheld unless it is totally arbitrary. *County of Alameda v. Carleson*, 5 Cal. 3d 730, 746 (1971). Where a city acts pursuant to or in furtherance of a state statute, courts will defer to the state legislature in determining whether a public purpose exists.

VII. CONCLUSION

More often than not, determining the application of conflicts of interest laws in particular circumstances requires complicated analysis. Because the consequences for a violation of these laws can be very serious, it is important that potential conflicts be identified as soon as possible to ensure that the appropriate analysis can be performed. To that end, we recommend that public agency staff prepare maps of council member residences and other real property interests (and those of other public officials, such as planning commissioners) so that such officials may be alerted to projects that are located within 500 and 1,000 feet of their real property interests. Even though the materiality standards for real property interests have changed over the years, this is still an important starting point for a conflicts analysis.

We encourage all public officials to keep in mind that it is the individual responsibility of each public official to determine whether he or she has a conflict in a particular decision.

We encourage officials and staff to seek advice from the city attorney when in doubt about a conflicts of interest issue. Because only a formal, written opinion from the FPPC can immunize someone from prosecution, we strongly encourage officials and staff to seek advice from the city attorney as early as possible, so that, if necessary, the public agency may request a formal opinion from the FPPC prior to any participation in a decision where a public official may have a conflict.

In addition, the Legislature has enacted a statute that requires public officials to take at least two hours of ethics training every two years if the local agency provides that official with any type of compensation, salary, or stipend or provides reimbursement for necessary and reasonable expenses incurred by that official in the performance of his or her official duties. § 53235(a). Ethics training would also be required of any employee designated by the local agency to receive such training. § 53234(c). Please seek advice from the city attorney regarding further details about ethics training.

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