AGENDA

PLANNING COMMISSION

MONDAY, FEBRUARY 3, 2025 – 6:00 PM – REGULAR MEETING

VIRTUAL & IN COUNCIL CHAMBER, 1644 OAK STREET, SOLVANG, CA 93463

Planning Commissioners:
Kief Adler
Aaron Petersen
Brandon Sparks-Gillis
Jack Williams
William Zigler

AGENDA AND SUPPORTING MATERIALS – Available for viewing 8:00a.m.-5:00p.m. at City Hall, 1644 Oak Street, Solvang, and on the City's website https://www.cityofsolvang.com/agendacenter. Additional writings that are distributed to a majority of the Committee after the posting of the agenda will be made available at City Hall and on the City's website.

AGENDA POSTING NOTIFICATION - Subscribe to receive email or text message notifications when agendas are posted online through "Notify Me" at: https://www.cityofsolvang.com/List.aspx

PUBLIC COMMENT - The public is encouraged to address the Committee in-person, virtually, or in-writing on agenda and non-agenda items. If provided in writing, comments must be submitted to the City Clerk at cityclerk@cityofsolvang.com by 5:00 p.m. on the Wednesday before the meeting to be considered. Your comment will be recorded and distributed appropriately. Comments on agenda items will be heard at the time each item is considered, including non-agenda items. In-person speakers will be invited to make public comments first. Virtual speakers will follow.

CAMPAIGN CONTRIBUTION DISCLOSURE - Pursuant to Government Code Section 84308, any party to a City proceeding must disclose on the record any campaign contributions made to a member of the City Council [or commission] in excess of $250 in the past 12 months. This disclosure requirement includes contributions by the party's agent and aggregated contributions from persons or entities related to the party. Please make the disclosure as soon as possible, but not later than the beginning of the proceeding.

AMERICANS WITH DISABILITIES ACT - If, as a participant of this meeting, you need special assistance the City will attempt to accommodate you in every reasonable manner. Please contact the City Clerk at either (805) 688-5575 x206 or cityclerk@cityofsolvang.com. 72- hours' notice is requested.

PARTICIPATING IN THE MEETING - Planning Commission meetings will be conducted by video/teleconferencing through Zoom. Meetings will also be broadcast live on Channel 23 and streamed on the City's website, Vimeo, and YouTube.

- To join by Zoom, visit https://zoom.us/j/3066529195. If you wish to speak, please use the "raised hand" symbol.
- To join by phone, call **(888) 788-0099** and enter Meeting ID: **306 652 9195#**. The phone line will be open starting at 5:30 p.m.

6:00 PM REGULAR MEETING OF THE PLANNING COMMISSION

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

1. APPROVE ORDER OF AGENDA

At this time the Commission reviews the order of business to be conducted and receive requests for, or makes announcements regarding any change(s) to the order of business

2. ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON

Consistent with Solvang Municipal Code Section 2-1-3.A.1, the design review committee shall elect chairperson and Vice Chairperson among its members

3. PUBLIC COMMENT

The Public may address the Commission on items not on the Agenda and on Consent. Each speaker will be afforded three minutes and may speak only once. State Law does not allow action to be taken unless it is noticed on the agenda. The Commission may briefly respond or ask Staff to follow up on such items and/or schedule the matter to a future meeting.

4. CONSENT ITEMS

Items on Consent are typically routine and will be approved in one motion. The Chair will call on anyone wishing to address the Commission on any Consent item on the agenda, which has not been pulled by the Commission for discussion. Each speaker will be permitted to speak only once and comments will be limited to a total of three minutes.

a. Approve the Minutes of the December 2, 2024 Regular Meeting……3

b. Receive and file Planning and Building Division Current Projects February 2025……4

5. EX PARTE COMMUNICATION

This section is intended to allow all officials the opportunity to reveal any disclosure or ex-parte communication regarding the following public hearings.

6. PUBLIC HEARINGS:

a. Public hearing to consider Adopting Planning Commission Resolution No. 25-01 approving a one (1) year time extension for a Development Plan and previously adopted California Environmental Quality Act (CEQA) exemption located at 1420 Mission Drive (APN 137-590-010)…….7

7. DISCUSSION ITEMS:

a. Oral Presentation on the Brown Act…….49

8. PLANNING COMMISSIONERS' COMMENTS

9. PLANNING MANAGER REPORT

10. ADJOURNMENT

AFFIDAVIT OF POSTING

I, A. Rafael Castillo, Planning Manager, for the City of Solvang, California, DO HEREBY CERTIFY under penalty of perjury under the laws of the State of California, that the foregoing notice was posted at the City of Solvang City Hall bulletin board at 1644 Oak Street, Solvang, CA and on the City of Solvang website not less than 72 hours prior to the meeting, per Government Code 54954.2.

Dated this 29th day of January 2025.

MINUTES
SOLVANG PLANNING COMMISSION
Monday, December 2, 2024

Regular Meeting - 6:00 PM

6:00 PM REGULAR MEETING OF THE PLANNING COMMISSION

CALL TO ORDER

Assistant Planner Lisa Scherman called the Regular meeting to order at 6:02 p.m. in the City Hall Council Chamber, 1644 Oak Street, Solvang, California.

ROLL CALL

Present: Commissioner Aaron Petersen and Chair Jack Williams

Absent: Commissioners Kief Adler, Scott Gold and Vice Chair Joannie Jamieson

Staff: Planning Manager Rafael Castillo, Assistant Planner Lisa Scherman

ADJOURNMENT: 6:03 p.m.

Assistant Planner Scherman announced there was a lack of quorum and adjourned the meeting at 6:03 p.m.

Respectfully submitted:

_____
Rafael Castillo
Planning Manager

CITY OF SOLVANG
PLANNING & BUILDING – MAJOR PROJECT LIST
February 2025

Project #	Applicant	Project Name	Address	APN	Zoning	Project Description	Project Status	Expiration Date
PROJECTS UNDER CONSTRUCTION								
22-130, 131,132	1621 Fir Street, LLC	New SFR Fir Street	1621, 1623, 1625 Fir Street	139-141-004	R-3	3 New detached SFR	Finaled – Occupancy Issued	
23-165	Jones	ADU w/Attached Garage	1534 Elm Ave	139-132-005	R-2	New 790 sf ADU w/ attached garage	Building Permit Issued	Withdrawn by applicant
22-195	Jensen Family Trust	New multi-family Development	420 Fifth Street	139-174-045	R-3	5 Unit multi-family development with 1 ADU	Building Permit Issued	11/30/2026
23-111	Olsen Fam TR	Solvang Inn and Cottages Remodel	1515 Mission Dr	139-172-010	VMU	Commercial TI to Solvang Inn & Cottages. Convert existing managers unit to common area and lobby. Remodel lobby. Project has been re-scoped to reduce rooms/office.	Building Permit Issued	04/28/2025
22-282	Solvang Senior Center	Solvang Senior Center	1745 Mission Dr	139-150-024	PI	Demolish existing structures and replace with a new 2 story, 5,640 sf commercial / office space	Building Permit Issued	01/13/2026
210223	Bella Vista SYV, LLC	Bella Vista	1875,1879,1883 Laurel	139-100-049,048,047	R-2	3 new SFR from an existing subdivision	Building Permit Issued	08/01/2025
24-064	Archdiocese of Los Angeles	Mission Santa Ines Seismic Retrofit	1706 Mission Drive	139-240-067	PI	Seismic Retrofit of Mission Santa Ines. No exterior work	Building Permit Issued	10/02/2025
24-042	On Design LLC	1704 Mission Drive hotel	1704 Mission Drive	139-240-033	VMU	New 9 Unit hotel cottages and meeting space	Applicant requesting refund / project on hold	11/25/2025
23-215**	Romain	New ADU/ SFR addition	1618 Birch	139-233-002	R-2	1,031 SF detached ADU with a 691 SF addition to existing SFR with ancillary structures	Building Permit Issued	10/17/2025
24-079	Mcinerney	Façade improvement	475 First Street	139-181-013	VMU	Façade improvement on existing bicycle shop. Approved by DRC	Building Permit Issued	01/23/2026
24-174**	Benson Trust	New-Coffee Shop/Ice Cream	1618 Copenhagen Dr	139-191-003	VMU	Interior Commercial TI for new coffee and ice cream shop	Building Permit Issued	01/27/2026

CITY OF SOLVANG
PLANNING & BUILDING – MAJOR PROJECT LIST
February 2025

Project #	Applicant	Project Name	Address	APN	Zoning	Project Description	Project Status	Expiration Date
PROJECTS UNDER BUILDING PERMIT REVIEW **denotes permits not requiring discretionary review per California Government Code and/or Solvang Municipal Code								
210183	Darkstar Development, LLC	670 Alamo Pintado Condos	670 Alamo Pintado	139-530-005	R-3	32 new Multi-unit condo building permit phase	To Be Withdrawn	03/02/2025
24-182**	Whitey	New SFR plus JADU	2000 High Meadow Road	139-520-019	R-1	New SFR plus JADU	Awaiting Re-submittal	03/22/2025
23-284**	Gutierrez	New ADU*	516 Fifth Street	139-132-016	VMU	New ADU and garage demo	Awaiting Re-submittal	05/17/2025
24-215	Woodall Building and Design	Minor Tenant Improvement : New Restaurant	435 Alisal Rd	139-193-010	VMU	Commercial TI – Crudo Restaurant	Awaiting Re-submittal	04/22/2025
24-191	FP Old Mill Associated LP	Minor Tenant Improvement: Tasting Room	482 First Street	139-182-020	VMU	Commercial TI- CaliPaso Wine Tasting Room	Ready to be issued	03/06/2025
APPROVED ENTITLEMENTS								
180114	1420 Mission Drive LLC	New Hotel	1420 Mission Drive	137-590-010	VMU	New 11 Unit Hotel	PC Extension 02/03/2025	11/06/2024
200233	Maz Y.	Water Wheel Building	425 First Street	139-192-024	VMU	Existing commercial building renovation with parking waiver	Approved	3/01/2025
210183	Darkstar Development, LLC	670 Alamo Pintado Condos	670 Alamo Pintado	139-530-005	R-3	Condo Map 32 Unit Development	Approved-To Be Withdrawn	12/04/2025
22-011	Cearnal Collective	Sansum Clinic	1925 Windmill Ln	139-540-013,014	PO	New 30,000 sf medical/office building	Approved	2/06/2026
22-021	Lonnie Roy	1704 Mission Drive hotel	1704 Mission Drive	139-240-033	VMU	New 9 Unit hotel cottages and meeting space	Approved	12/04/2026
PLANNING APPLICATIONS IN PROCESS								
23-242	Lots on Alamo Pintoado LLC	Wildwood-SB 330 Application	N/A	139-530-001,002	R-3/R-1	Proposed 100 multi-family units with 20 affordable housing units with proposed State Density Bonus. Utilizing SB 330 application via CGC Section 65941.1	Deemed Complete / CEQA Analysis	12/23/2025

CITY OF SOLVANG
PLANNING & BUILDING – MAJOR PROJECT LIST
February 2025

Project #	Applicant	Project Name	Address	APN	Zoning	Project Description	Project Status	Expiration Date
23-302	Lonnie Roy	LUCCA Market & Deli Amendment	1714 Mission Drive	139-240-034	VMU	Amendment to approved Development Plan (Resolution No 22-07). Proposed amendment include. additions are proposed to the existing structure along the existing drive thru for a total proposed building size of 9,456 SF.	Deemed Completed. DRC 2/20/2025	12/13/2025
PA 24-003	Valeueven Fam / Power Trust	Valeueven Fam / Power Trust	700 Mesa Dr	137-750-014/137-120-083	PR	3 Parcel Lot Line Adjustment	Under Review	01/13/2026
PA 25-001	SBID, LLC	1693 Mission Minor TI	1639 Mission	139-143-025	VMU	Minor Tenant Improvement, new windows/doors for 1693 Mission Ice Crean Shop. No expansion of building, like for like improvement of color and façade. Under 500 square feet of total scope of work.	Under Review – Zoning Clearance	01/13/2026
PA 25-002	Hygge Boba Tea	Wall Signs	1665 Copenhagen Dr	139-182-016	VMU	Two (2) new walls signs	Under Review	06/24/2025
PA 25-006	Alisal Guest Ranch	Temporary Use Permit – Temp Kitchen Facilities	1054 Alisal Road	137-310-010	AT	Temporary Use permit under new Municipal Code to allow for temporary kitchen facilities within temporary trailers during construction / remodel of commercial kitchen (BP 24-110).	Under Review	06/28/2025

PLANNING COMMISSION STAFF REPORT

AGENDA ITEM 6.a

Meeting Date: February 3, 2025

SUBJECT: **Public hearing to consider Adopting Planning Commission Resolution No. 25-01 approving a one (1) year time extension for a Development Plan and previously adopted California Environmental Quality Act (CEQA) exemption located at 1420 Mission Drive (APN 137-590-010)**

PREPARED BY: A. Rafael Castillo, AICP, Planning and Building Manager

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DISCUSSION:
On November 2, 2020, the Planning Commission reviewed and approved Planning Commission Resolution 20-05 (Attachment A) entitling a Development Plan that included the following located at 1420 Mission Drive (APN 137-590-010), in the Tourist Related Commercial (TRC) zone:

- Construction of a 5,657 square foot (sf) building
- Nine (9) 2-bedroom and two (2) 3-bedroom units for a total of 11 hotel units on-site
- On-site landscaping and associated improvements
- Frontage improvements

Prior to January 8, 2025 entitlements known as “development plans” were to expire three (3) years after initial approval, unless construction has been completed or occurred, or a time extension has been applied for by the applicant. At its November 6, 2023 meeting, the Planning Commission granted a one (1) year time extension. Since that time, the applicant has yet to formally submit building permits, and no construction has commenced on the project. The applicant submitted a formal time extension application and provided a letter (Attachment B). The applicant requests an additional year extension. This time extension was applied prior to the expiration of the existing development plan, however, there was a lack of quorum at the Planning Commission’s December 2, 2024 meeting.

As a part of the 2024 Zoning Ordinance update, the city adopted time limits for entitlements. Consistent with Section 11-16-12.B.2, the proposed project will exhaust all its time extensions if a building permit is not pulled and construction commenced on or prior to November 2, 2025 if a time extension is granted by the Commission.

CEQA Determination
The Planning Commission previously adopted a Categorically Exemption (Class 32) from the provisions of the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., “CEQA”) and CEQA Guidelines (Title 14 California Code of Regulations §§ 15000, et seq.) pursuant to Section 15332.

RECOMMENDATION:
Staff recommends the Planning Commission adopt Planning Commission Resolution No. 25-01 approving a one (1) year time extension located at 1420 Mission Drive (APN 137-590-010) for a Development Plan and previously adopted California Environmental Quality Act (CEQA) exemption.

ALTERNATIVES:
The Planning Commission has the following alternatives to consider:

1. Adopt a Resolution approving the one (1) year time extension; or
2. Provide alternative direction to staff.

FISCAL IMPACT:
The fee for this review is covered by the $1,960 Development Plan Time Extension Fee paid by the Applicant.

ATTACHMENTS:

A. Applicant Letter
B. Approved Project Plans
C. Adopted Planning Commission Resolution 20-05
D. Planning Commission Resolution 25-01

1420 Mission Drive LLC

11/23/2024

To Whom It May Concern,

I am writing on behalf of 1420 Mission Drive LLC regarding our ongoing development project located at 1420 Mission Drive. We are reaching out to kindly request an extension as we work to assemble the necessary team and secure the capital required to complete the project.

We respectfully request an annual extension, setting the new deadline for November 2025. This additional time will allow us to align the development timeline with our current project schedule and ensure the project is executed to the high standards expected by the city and our community.

We understand the importance of timely project completion and want to assure the city and its residents of our continued dedication to this project. The requested extension will help us deliver a development that aligns with our shared vision and goals.

We greatly appreciate your understanding and consideration of this request. Thank you for your time, and we look forward to your favorable response.

Sincerely,
1420 Mission Drive LLC

Jake Rodriguez
Manager

MISSION DRIVE BOUTIQUE HOTEL
1420 MISSION DRIVE, SOLVANG, CA 93463

PLANNING COMMISSION APPROVED

This project has been approved by the Solvang Planning Commission and shall be utilized in conjunction with any conditions of approval for future building permits. Any deviations from this approved plan set may require an amendment to approved plans

SHEET INDEX

GENERAL

C.S	COVER SHEET
-	LAND SURVEY

CIVIL

C1	TITLE SHEET, PROJECT DATA
C2	GRADING AND DRAINAGE PLAN
C3	EROSION CONTROL PLAN AND FIRE DEPT. STUDY

ARCHITECTURAL

A-0.0	SITE PHOTOS - EXISTING
A-1.0	SITE PLAN
A-2.0	FLOOR PLAN
A-2.1	ROOF PLAN
A-3.0	BUILDING ELEVATIONS
A-3.1	GAZEBO DETAIL AND FIRE DEPT. EXHIBIT

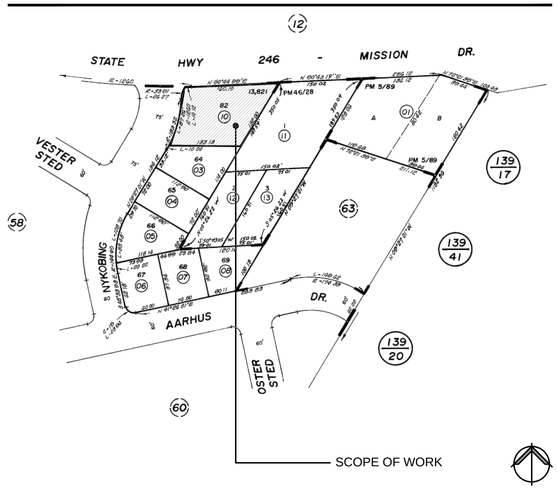
LANDSCAPE

L-1	LANDSCAPE PLAN PLANTING NOTES & PLANTING LIST
L-2	IRRIGATION PLAN WELCO CALCS
L-3	LANDSCAPE DETAILS

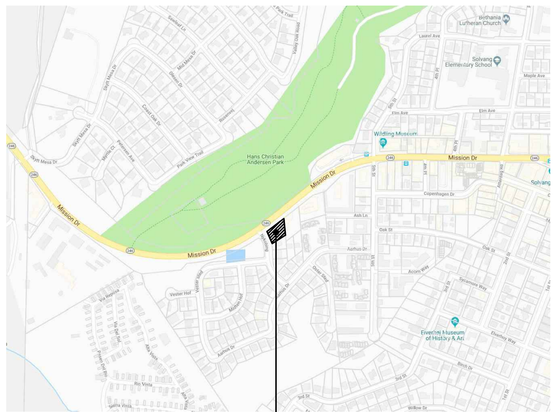
PROJECT INFORMATION

PROJECT ADDRESS:	1420 MISSION DRIVE (STATE HIGHWAY 246) SOLVANG, CA 93463
ZONING:	TRC
APN:	137-590-010
COVERAGE:	SITE: 16,552 SF (.38 ACRE)
	IMPERVIOUS: 7,828 SF (47%)
	BUILDING: 5,657 SF (34%) HARDSCAPE: 7,828 SF (47%) LANDSCAPE: 3,067 SF (19%) TOTAL: 16,552 SF
PARKING:	REQUIRED: 13 SPACES (11 UNITS, 1 SPACE PER UNIT, 2 EMPLOYEES SPACES PROVIDED: 15 SPACES (1 ADA PER CBC 2016 TABLE 11B-208.2) UNCOVERED PARKING AREA: 6,105 SF
PROJECT DESCRIPTION:	NEW BOUTIQUE HOTEL - 11 UNITS (10 UNITS WITH 2 ROOMS AND 1 UNITS WITH 3 ROOMS (TOTAL 11,184 SF) INCLUDING AN OFFICE AND RECEPTION AREA
CONSTRUCTION TYPE:	V - A (FULLY SPRINKLERED)
OCCUPANCY CLASSIFICATION:	R-1 (PER CBC 2016 SEC. 310.3)
NUMBER OF FLOORS:	2
BUILDING SETBACK:	FRONT - 42' CENTERLINE OF MISSION DRIVE FRONT - 30' CENTERLINE OF NYKOBING DRIVE REAR / SOUTH - 25' SIDE / EAST - 0'
BUILDING HEIGHT:	35'
BUILDING OWNER:	1420 MISSION DRIVE, LLC 606 ALAMO PINTADO RD, 3-167 SOLVANG, CA 93463

ASSESSOR MAP



VICINITY MAP



KAMUS + KELLER
Interiors | Architecture
111 W. OCEAN BLVD.
SUITE 1750
LONG BEACH, CA
90802
P: 562.216.5244
WWW.KKAIA.COM

ISSUE | DATE

MISSION DRIVE BOUTIQUE HOTEL
1420 MISSION DRIVE
SOLVANG, CA 93463

PROJECT NO.
19.0049

DRAWN/REVIEWED
DC/DK

DATE/ISSUE
03.04.2020

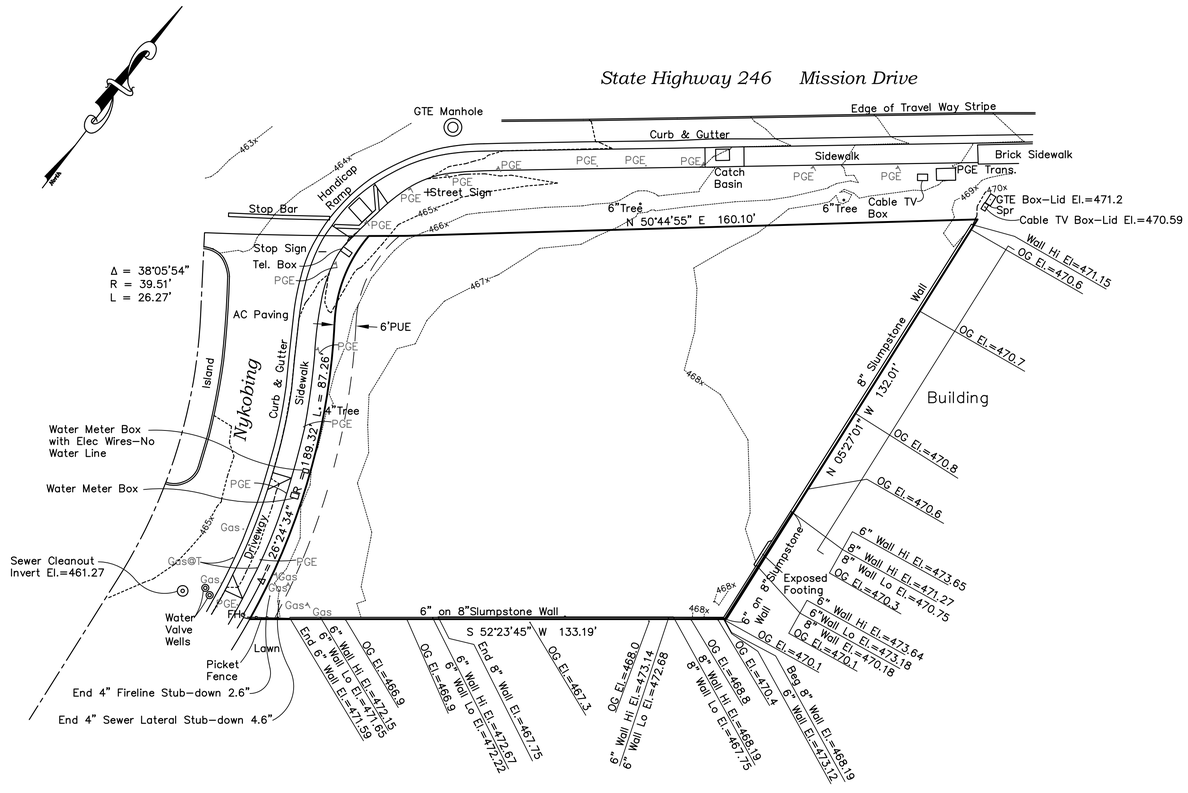
SHEET TITLE
COVER SHEET

SHEET NO.
C.S.

GRAPHIC SCALE

20 0 10 20 40 80

(IN FEET)
1 inch = 20 ft.



Notes & Legend

PGE^ Denotes PG&E underground flag
PGE· Denotes PG&E underground paint mark
Gas^ Denotes So Cal Gas underground flag
Gas· Denotes So Cal Gas underground paint mark
FH Denotes fire hydrant
Spr Denotes sprinkler

Bearings and distances shown are per Tract 13,821, 153/M/30-34. Benchmark for project is City Benchmark 91-32, elevation: 466.69'

2020 ADDENDUM PER OWNER;S REQUEST

1. PTR DENOTES PRELIMINARY TITLE REPORT DATED 05-10-20108 BY CHICAGO TITLE NO. FWVE-7751800028-RR
2. PUE DENOTES PUBLIC UTILITY EASEMENT AS SHOWN ON TRACT MAP AND CITED ON THE PRELIMINARY TITLE REPORT FURNISHED BY OWNER - PTR ITEM 4
3. PTR ITEM 5 IS THE AGREEMENT TO CONSTRUCT THE APPROVED IMPROVEMENTS AND BONDING OF THE CONSTRUCTION IMPROVEMENTS FOR THE TRACT MAP IN 1988
4. PTR ITEM 6 CONDITIONS OF APPROVAL FOR THE TRACT MAP
5. PTR ITEM 7 OFFSITE CONSTRUCTION EASEMENT ON THE WESTERLY SIDE OF THE TRACT MAP - DOES NOT APPLY TO THIS LOT
6. PTR ITEM 8 CC&R'S FOR THE TRACT MAP
7. PTR ITEM 9 CONDITIONS IMPOSED ON A PLANNED OFFICE BUILDING IN 2005 WHICH WAS NEVER BUILT

VERTICAL DATUM APPEARS TO BE NGVD29

THE ADDENDUM COVERS ONLY THE ITEMS LISTED AND DOES NOT IMPLY THAT A UPDATED FIELD SURVEY WAS COMPLETED

CITY OF SOLVANG CALIFORNIA

PLANNING COMMISSION APPROVED

This project has been approved by the Solvang Planning Commission and shall be utilized in conjunction with any conditions of approval for future building permits. Any deviations from this approved plan set may require an amendment to approved plans

REVISIONS	
DATE	REMARKS
03-20-2020	ADDED NOTES PER TITLE REPORT

PROFESSIONAL LAND SURVEYOR
Jed Berkeley Blake
N° 4786
STATE OF CALIFORNIA

Surveyor's Statement

THIS MAP IS A TRUE DEPICTION OF A FIELD SURVEY MADE BY THIS OFFICE AND MEETS THE STANDARDS OF MY PROFESSION FOR THE DATE THAT IT WAS PREPARED.

_____ DATED _____

JED B. BLAKE, PLS 4786
LICENSE EXPIRATION DATE: SEPTEMBER 30, 2004

PREPARED BY
Blake Land Surveys
250 INDUSTRIAL WAY, SUITE C
P.O. BOX 869
BUELLTON, CA 93427
TEL: 805-688-2054
FAX 805-686-1976
EMAIL us@blakelandsurveys.com
ESTABLISHED IN 1980

Topographic Map of Tract 13,821, 153/M/30-34, City of Solvang, County of Santa Barbara, State of California for SYNCON Homes

DATE PREPARED 10/26/2004	SHEET 1 OF 1
	PROJECT NO.P2004127
DRAWING NO. 2004127	SCALE 1"=20'
BY KSB	DATUM City of Solvang
	REF:

AIR POLLUTION CONTROL DISTRICT REQUIREMENTS

RULE 345. CONTROL OF FUGITIVE DUST FROM CONSTRUCTION AND DEMOLITION ACTIVITIES. (Adopted 1/21/10)

A. Applicability

This rule applies to any activity associated with construction or demolition of a structure or structures. Activities subject to this regulation are also subject to Rule 302 (Visible Emissions) and Rule 303 (Nuisance).

B. Exemptions

The provisions of this rule shall not apply to the following:

1. Construction or demolition activities in support of any structure having four or fewer dwelling units under one roof.
2. Construction or demolition activities in support of a mobile home.
3. Emergency operations conducted during and in response to life-threatening situations, or in conjunction with any officially declared disaster or state of emergency.
4. Demolition activities using blasting explosives, which have been permitted by the California Division of Industrial Safety. However, any other activities capable of generating fugitive dust emissions and performed in conjunction with explosive blasting, including but not limited to vehicle transport of materials produced by blasting operations, are not exempt from complying with provisions of this rule or other applicable rules.
5. Any active operation, open storage pile, or disturbed surface area demonstrated to be in conflict with the California or Federal Endangered Species Acts, or a local, state, or federal water quality requirement.

C. Definitions

1. **"Active Operations"** means activities capable of generating fugitive dust, including, but not limited to, bulk material handling, earth-moving activities, construction or demolition activities, or vehicular movement on unpaved surfaces associated with construction/demolition activities.
2. **"Blower"** means any device used, designed or operated to produce a current of air by fuel, electricity or other means to push, propel or blow dirt, cuttings, refuse or debris.
3. **"Bulk Material"** means sand, gravel, aggregate material less than two inches in length or diameter, and other organic or inorganic particulate matter.
4. **"Construction/Demolition Activities"** means any on-site mechanical operations conducted in preparation of, or related to, the building, alteration, rehabilitation, demolition, or improvement of property, including, but not limited to, grading, excavating, loading, crushing, cutting, planning, or ground breaking.
5. **"Disturbed Surface Area"** means that portion of the ground that has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural soil condition, thereby increasing the potential for emissions of fugitive dust. This definition excludes those areas that have:
   a. been restored to a natural state, such that the vegetative ground cover and soil characteristics are similar to adjacent or nearby natural conditions;

   b. been paved or otherwise covered by a permanent structure.
6. **"Earth-Moving Activities"** means any operations using equipment to move or uncover soil, and includes, but is not limited to the following:
   a. grading, earth cutting and filling operations;
   b. loading or unloading of dirt or bulk materials;
   c. adding to or removing from open storage piles, soil mulching.
7. **"Emergency"** means any sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate the loss of, or damage to, life, health, property, or essential public services.
8. **"Erosion"** means the movement and deposition of land surface materials by water or wind primarily as a result of human activities.
9. **"Fugitive Dust"** means any solid particulate matter that becomes airborne, directly or indirectly as a result of the activities of any person(s), except for emissions from an exhaust stack.
10. **"Open Storage Pile"** means any accumulation of bulk material or soil with five percent or greater silt content which is not fully enclosed, covered or chemically stabilized, and which attains a height of three feet or more and a total surface area of 150 or more square feet. Silt content level is assumed to be five percent or greater unless a person can show, by sampling and analysis in accordance with ASTM Method C-136 or other equivalent method approved in writing by the California Resources Board, that the silt content is less than five percent.
11. **"Outbound"** means trucks that are going in the direction away from (i.e., leaving or exiting) a construction or demolition site or property.
12. **"Paved Road"** means a public or private improved street, highway, alley, public way, or easement that is covered by typical roadway materials including, but not limited to, asphalt paving or concrete.
13. **"PM_{10} - Efficient Street Sweeper"** means any street sweeper certified by the Control Officer or by the South Coast Air Quality Management District as meeting the Particulate Matter (10 microns and less) capture efficiency criteria outlined in South Coast Air Quality Management District Rule 1186 Appendix A.
14. **"Property Line"** means the boundary of an area owned or legally controlled by a person causing fugitive dust emissions or allowing such emissions. This may include all or portions of a legal parcel or parcels.
15. **"Silt"** means loose sedimentary material with rock particles usually 1/20 millimeter or less in diameter.
16. **"Source"** means all activities and operations causing emissions that are located on contiguous property under common ownership or control, including associated facility-access and haul roads.
17. **"Structure"** means anything constructed, erected or demolished, the use of which requires location on the ground or attachment to something located on the ground, excluding trailers and sidewalks. Structure shall not include any public highway or roadway.
18. **"Track-Out/Carry-Out"** means any bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles and/or equipment (including tires), or are inadvertently carried out, and that fall onto a paved road, creating visible roadway dust.

19. **"Visible Dust Emissions"** means any solid particulate matter that can be seen in the air without the aid of instruments other than corrective lenses.
20. **"Visible Roadway Dust"** means any sand, soil, dirt, or other solid particulate matter which can be seen upon paved public road surfaces and which can be removed by a vacuum sweeper, or a wet sweeper under normal operating conditions.

D. Requirements and Standards

1. **Visible Fugitive Dust Beyond the Property Line.** No person shall engage in any construction or demolition activity or earth moving activities subject to this rule in a manner that causes discharge into the atmosphere beyond the property line visible dust emissions of 20% opacity or greater for a period or periods aggregating more than 3 minutes in any 60 minute period.
2. **Truck Hauling.** No person, including facility or site owner or operator of source, shall load or allow the loading of bulk materials or soil onto outbound trucks unless at least one of the following dust prevention techniques is utilized:
   a. Use properly secured tarps or cargo covering that covers the entire surface area of the load or use a container-type enclosure.
   b. Maintain a minimum of 6 inches of freeboard below the rim of the truck bed where the load touches the sides of the cargo area and ensure that the peak of the load does not extend above any part of the upper edge of the cargo area.
   c. Water or otherwise treat the bulk material to minimize loss of material to wind or spillage.
   d. Other effective dust prevention control measures approved in writing by the Control Officer.
3. **Track-Out/Carry-Out.** Visible roadway dust as a result of active operations, spillage from transport trucks, erosion, or track-out/carry-out shall be controlled as outlined below:
   a. Visible roadway dust shall be minimized by the use of any of the following track-out/carry-out and erosion control measures that apply to the project or operations: track-out grates of gravel beds at each egress point, wheel-washing at each egress point during muddy conditions, soil binders, chemical soil stabilizers, geotextiles, mulching, or seeding; and
   b. Visible roadway dust shall be removed at the conclusion of each work day when bulk material removal ceases, or every 24 hours for continuous operations. If a street sweeper is used to remove any track-out/carry-out, only a PM_{10}-Efficient Street Sweeper shall be used. The use of blowers for removal of track-out/carry-out is prohibited.
4. **Demolition.** The following work practice standards shall be followed during structure demolition:
   a. As necessary to prevent visible emissions, the structure shall be wet (with sufficient quantities of water to prevent the generation of visible dust plumes) prior to removal. Wetting shall continue as necessary during active removal and the debris reduction process.
   b. Unless the owner or operator certifies in writing to the Control Officer prior to the demolition that safety concerns require otherwise, the structure shall be demolished inward toward the building pad and roof and walls shall be laid down so that they fall inward and not away from the building.

E. Rule Effective Date

Unless otherwise specified, the provisions of this rule as adopted on January 21, 2010 become effective July 21, 2010.

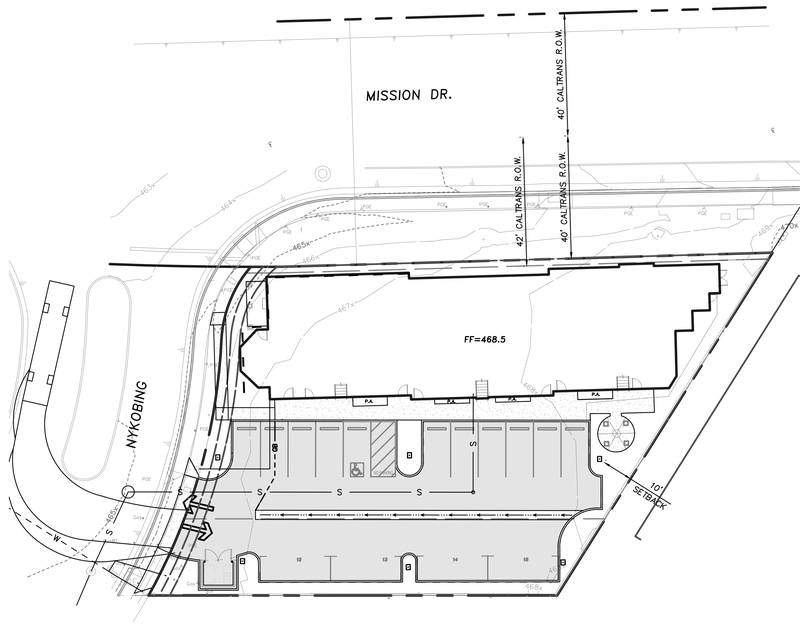
SANTA BARBARA COUNTY BUILDING & SAFETY DIVISION GRADING NOTES

SANTA BARBARA COUNTY BUILDING & SAFETY DIVISION GRADING NOTES
CURRENT NOTES CAN BE FOUND AT THE FOLLOWING WEBSITE (HTTP://SBCOUNTYPLANNING.ORG/BUILDING/GRADING.CFM).

1. ALL GRADING SHALL CONFORM TO SANTA BARBARA COUNTY CODE CHAPTER 14 AND STANDARDS AND REQUIREMENTS PERTAINING THERETO, THESE CONSTRUCTION DRAWINGS AND THE RECOMMENDATIONS OF THE SOILS ENGINEER AND ENGINEERING GEOLOGIST.
2. CONTRACTOR TO NOTIFY THE COUNTY GRADING INSPECTOR AND SOILS LABORATORY AT LEAST 48 HOURS BEFORE START OF GRADING WORK OR ANY PRE-CONSTRUCTION MEETING.
3. CONTRACTOR SHALL EMPLOY ALL LABOR, EQUIPMENT AND METHODS REQUIRED TO PREVENT HIS OPERATIONS FROM PRODUCING DUST IN AMOUNTS DAMAGING TO ADJACENT PROPERTY, CULTIVATED VEGETATION AND DOMESTIC ANIMALS OR CAUSING A NUISANCE TO PERSONS OCCUPYING BUILDINGS IN THE VICINITY OF THE JOB SITE. CONTRACTOR SHALL BE RESPONSIBLE FOR DAMAGE CAUSED BY DUST FROM HIS GRADING OPERATION.
4. BEFORE BEGINNING WORK REQUIRING EXPORTING OR IMPORTING OF MATERIALS, THE CONTRACTOR SHALL OBTAIN APPROVAL FROM PUBLIC WORKS ROAD DIVISION FOR HAUL ROUTES USED AND METHODS PROVIDED TO MINIMIZE THE DEPOSIT OF SOILS ON COUNTY ROADS. GRADING/ROAD INSPECTORS SHALL MONITOR THIS REQUIREMENT WITH THE CONTRACTOR.
5. THE GEOTECHNICAL ENGINEER SHALL PROVIDE OBSERVATION AND TESTING DURING GRADING OPERATIONS IN THE FIELD AND SHALL SUBMIT A FINAL REPORT STATING THAT ALL EARTH WORK WAS PROPERLY COMPLETED AND IS IN SUBSTANTIAL CONFORMANCE WITH THE REQUIREMENTS OF THE GRADING ORDINANCE.
6. AREAS TO BE GRADED SHALL BE CLEARED OF ALL VEGETATION INCLUDING ROOTS AND OTHER UNSUITABLE MATERIAL FOR A STRUCTURAL FILL, THEN SCARIFIED TO A DEPTH OF 6" PRIOR TO PLACING OF ANY FILL. CALL GRADING INSPECTOR FOR INITIAL INSPECTION.
7. A THOROUGH SEARCH SHALL BE MADE FOR ALL ABANDONED MAN-MADE FACILITIES SUCH AS SEPTIC TANK SYSTEMS, FUEL OR WATER STORAGE TANKS, AND PIPELINES OR CONDUITS. ANY SUCH FACILITIES ENCOUNTERED SHALL BE REMOVED AND THE DEPRESSION PROPERLY FILLED AND COMPACTED UNDER OBSERVATION OF THE GEOTECHNICAL ENGINEER.
8. AREAS WITH EXISTING SLOPES WHICH ARE TO RECEIVE FILL MATERIAL SHALL BE KEYED AND BENCHED. THE DESIGN AND INSTALLATION OF THE KEYWAY SHALL BE PER THE GEOTECHNICAL ENGINEER'S RECOMMENDATION OR PER COUNTY STANDARD DETAIL NO. G-13.
9. FILL MATERIAL SHALL BE SPREAD IN LIFTS NOT EXCEEDING 6" IN COMPACTED THICKNESS, MOISTENED OR DRIED AS NECESSARY TO NEAR OPTIMUM MOISTURE CONTENT AND COMPACTED BY AN APPROVED METHOD. FILL MATERIAL SHALL BE COMPACTED TO A MINIMUM OF 90% MAXIMUM DENSITY AS DETERMINED BY 1957 ASTM D - 1557 - 91 MODIFIED PROCTOR (AASHO) TEST OR SIMILAR APPROVED METHODS. SOME FILL AREAS MAY REQUIRE COMPACTION TO A GREATER DENSITY IF CALLED FOR IN THE CONSTRUCTION DOCUMENTS. SOIL TESTS SHALL BE CONDUCTED AT NOT LESS THAN ONE TEST FOR EACH 18" OF FILL AND/OR FOR EACH 500 CUBIC YARDS OF FILL PLACED.
10. CUT SLOPES SHALL NOT EXCEED A GRADE OF 1 ½ HORIZONTAL TO 1 VERTICAL. FILL AND COMBINATION FILL AND CUT SLOPES SHALL NOT EXCEED 2 HORIZONTAL TO 1 VERTICAL. SLOPES OVER THREE FEET IN VERTICAL HEIGHT SHALL BE PLANTED WITH APPROVED PERENNIAL OR TREATED WITH EQUALLY APPROVED EROSION CONTROL MEASURES PRIOR TO FINAL INSPECTION.
11. SURFACE DRAINAGE SHALL BE PROVIDED AT A MINIMUM OF 2% FOR 5 FEET AWAY FROM THE FOUNDATION LINE OR ANY STRUCTURE.
12. ALL TREES THAT ARE TO REMAIN ON SITE SHALL BE TEMPORARILY FENCED AND PROTECTED AROUND THE DRIP LINE DURING GRADING.
13. AN EROSION AND SEDIMENT CONTROL PLAN SHALL BE REQUIRED AS PART OF THE GRADING PLAN AND PERMIT REQUIREMENTS.
14. "BEST MANAGEMENT PRACTICES FOR CONSTRUCTION ACTIVITIES: ERODED SEDIMENTS AND OTHER POLLUTANTS MUST BE RETAINED ONSITE AND MAY NOT BE TRANSPORTED FROM THE SITE VIA SHEET FLOW, SWALES, AREA DRAINS, NATURAL DRAINAGE COURSES, OR WIND. STOCKPILES OF EARTH AND OTHER CONSTRUCTION RELATED MATERIALS MUST BE PROTECTED FROM BEING TRANSPORTED FROM THE SITE BY THE FORCES OF WIND OR WATER. FUELS, OILS, SOLVENTS, AND OTHER TOXIC MATERIALS MUST BE STORED IN ACCORDANCE WITH THEIR LISTING AND ARE NOT TO CONTAMINATE THE SOIL AND SURFACE WATERS. ALL APPROVED STORAGE CONTAINERS ARE TO BE PROTECTED FROM THE WEATHER. SPILLS MAY NOT BE WASHED INTO THE DRAINAGE SYSTEM. EXCESS OR WASTE CONCRETE MAY NOT BE WASHED INTO PUBLIC WAY OR ANY OTHER DRAINAGE SYSTEM. PROVISIONS MUST BE MADE TO RETAIN CONCRETE WASTES ON SITE UNTIL THEY CAN BE DISPOSED AS A SOLID WASTE. TRASH AND CONSTRUCTION RELATED SOLID WASTE MUST BE DEPOSITED INTO A COVERED WASTE RECEPTACLE TO PREVENT CONTAMINATION OF RAINWATER AND DISPERSAL BY WIND. SEDIMENTS AND OTHER MATERIAL MAY NOT BE TRACKED FROM TO THE SITE BY VEHICLE TRAFFIC. THE CONSTRUCTION ENTRANCE ROADWAYS MUST BE STABILIZED SO AS TO INHIBIT SEDIMENTS FROM BEING DEPOSITED INTO THE PUBLIC WAY. ACCIDENTAL DEPOSITION MUST BE SWEPT UP IMMEDIATELY AND MAY NOT BE WASHED DOWN BY RAIN OR OTHER MEANS. ANY SLOPES WITH DISTURBED SOILS OR DENUDED OF VEGETATION MUST BE STABILIZED SO AS TO MINIMIZE EROSION BY WIND AND WATER."
15. IF GRADING OCCURS DURING NOV 1 THROUGH APR 15, NO GRADING SHALL OCCUR UNLESS APPROVED EROSION AND SEDIMENT CONTROL MEASURES ARE IN PLACE. DISCHARGES OF SEDIMENT FROM THE PROJECT SITE MAY RESULT IN A STOP WORK ORDER".
16. ALL EARTHWORK ON HILLSIDES, SLOPING OR MOUNTAINOUS TERRAIN SHALL BE STABILIZED TO PROTECT AND PREVENT LOSS OF SOILS, AS NECESSARY, YEAR-ROUND.

NOTE: GEOTECHINCAL ENGINEER TO REVIEW INFILTRATION RATE AND FEASIBILITY IN RELATION TO FOOTINGS AND BUILDING STABILITY.

BOUTIQUE HOTEL
GRADING & DRAINAGE PLAN
1420 MISSION DR.
SOLVANG, CA.



SITE PLAN
1" = 30'

CITY OF SOLVANG CALIFORNIA

PLANNING COMMISSION APPROVED

This project has been approved by the Solvang Planning Commission and shall be utilized in conjunction with any conditions of approval for future building permits. Any deviations from this approved plan set may require an amendment to approved plans

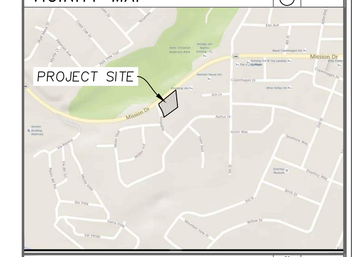
811 Know what's below. Call before you dig.

SCALE: 1" = 20'
0 20 40 60

NOT FOR CONSTRUCTION

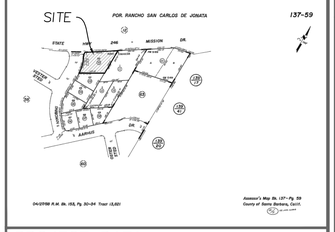
VICINITY MAP

N.T.S.



ASSESSORS PARCEL MAP

N.T.S.



PROJECT DATA

PROJECT ADDRESS:	1420 MISSION DR., CA
OWNER:	AL RODRIGUEZ
PROPOSED WORK:	GRADING, DRAINAGE, PAVING, & RELATED SITE WORK TO CONSTRUCT NEW BOUTIQUE HOTEL
APN:	137-590-010
LOT AREA:	16230 S.F./0.37 AC. GROSS & NET

GRADING STATISTICS

	CUT (CY)	FILL (CY)
RAW EW	120	60
ROAD SXN	290	
BLDG SXN		100
TOTAL	320	160

TOTAL GRADED AREA 16,230 SF / 0.37 ACRES

EARTHWORK QUANTITIES ARE RAW VOLUMETRIC ESTIMATES FOR PERMITTING ONLY. EARTHWORK VOLUMES ARE CALCULATED FROM THE EXISTING GROUND SURFACE TO THE PROPOSED FINISH SURFACE. CONTRACTOR SHALL PERFORM INDEPENDENT EARTHWORK ANALYSIS FOR PRICING OR PAY PURPOSES. QUANTITIES ABOVE DO NOT INCLUDE CLEARING, GRUBBING, SUBSIDENCE, SHRINKAGE OR EXPANSION FACTORS. ROAD STRUCTURAL SECTION VOLUMES ARE APPROXIMATE.

ABBREVIATIONS

AC	ASPHALT CONCRETE	N.T.S.	NOT TO SCALE
BW	BACK OF WALK	PP	POWER POLE
C	COMMUNICATIONS	RIM	TOP OF STRUCTURE
CLF	CHAIN LINK FENCE	S	SEWER
CO	CLEANOUT	SD	STORM DRAIN
DYS	DOUBLE YELLOW STRIPE	SDMH	STORM DRAIN MANHOLE
E	ELECTRICAL	SL	SEWER LATERAL
EP	EDGE OF PAVEMENT	SSMH	SEWER MANHOLE
FF	FINISHED FLOOR	STBK	SETBACK
FG	FINISHED GRADE	SYS	SINGLE YELLOW STRIPE
FH	FIRE HYDRANT	TC	TOP OF CURB
FL	FLOW LINE	TF	TOP OF FOOTING
FS	FINISHED SURFACE	TG	TOP OF GRATE
FW	FIRE WATER	TP	TOP OF PIPE
G	GAS	TW	TOP OF WALL
GFF	GARAGE FINISHED FLOOR	U	DRY UTILITIES
GM	GAS METER	W	WATER
HP	HIGH POINT	WM	WATER METER
INV	INVERT	WV	WATER VALVE
LP	LOW POINT		

CONSULTANTS

CIVIL ENGINEER:	SCOTT SMITH, P.E. 74892
PH:	(760) 522-1527

SHEET INDEX

C1	TITLE SHEET, PROJECT DATA, SITE PLAN
C2	GRADING, DRAINAGE PLAN, SECTIONS
C3	EROSION AND SEDIMENT CONTROL PLAN

COAST ENGINEERING & SURVEY, INC.
5553 HOLLISTER AVE. #5
GOLETA, CA. 93117
PH: (805) 439-1920

REGISTERED PROFESSIONAL ENGINEER SCOTT T. SMITH No. 74892 CIVIL STATE OF CALIFORNIA

PRELIMINARY

REVISIONS: DATE: DESCRIPTION:

DRAWN STS CHECKED STS

LOCATION MAP
1420 MISSION DRIVE
SOLVANG, CA. 93463
137-590-010

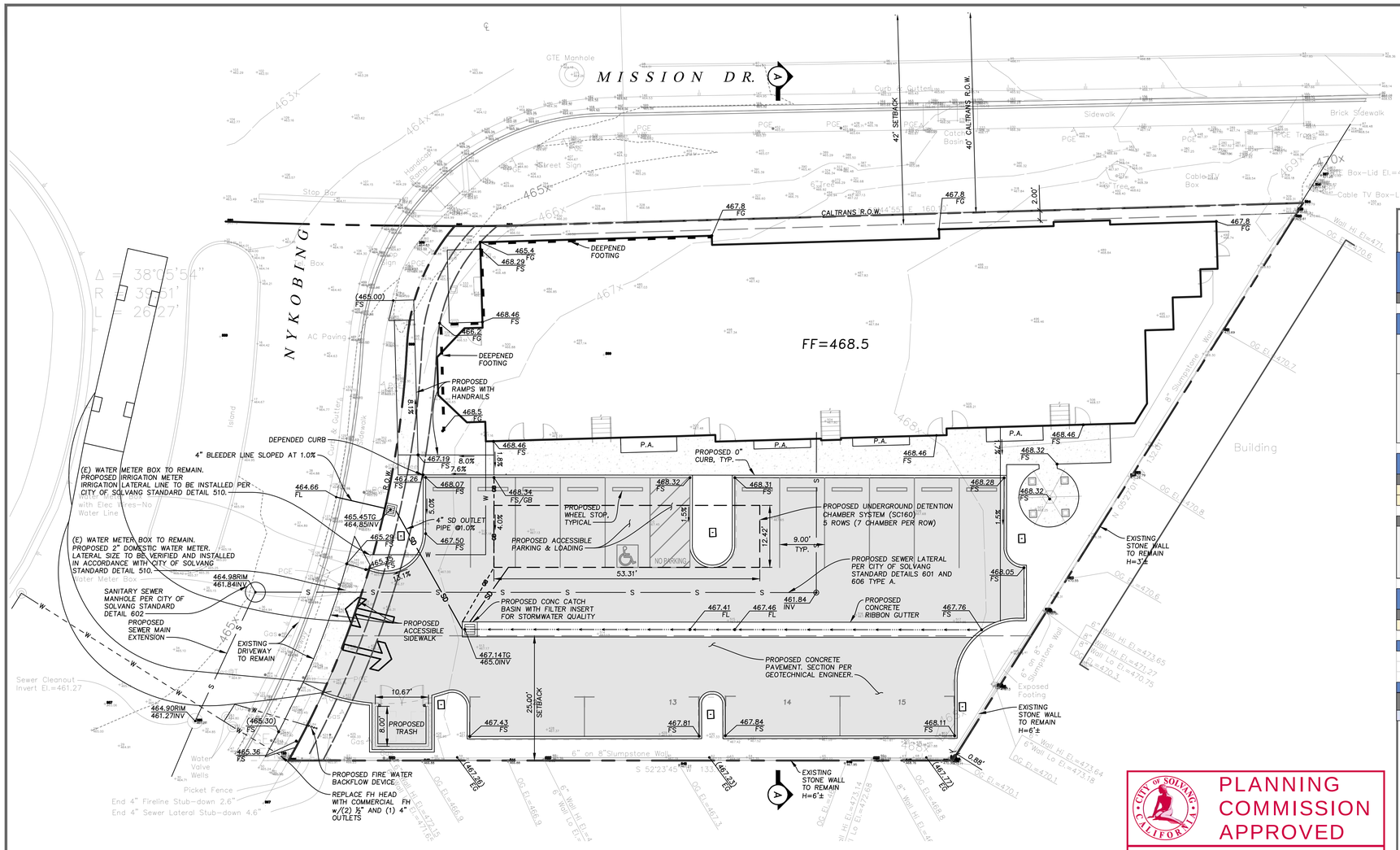
PROJECT NO.
17206

CLIENT
1420 MISSION DRIVE, LLC

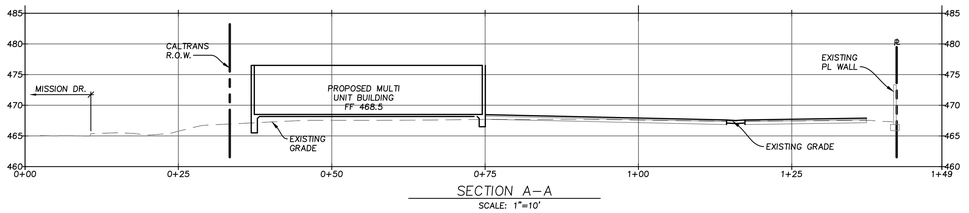
1420 MISSION DRIVE, LLC DEVELOPMENT
PRELIMINARY SITE IMPROVEMENTS PLAN
TITLE SHEET, PROJECT DATA

SHEET: C1 OF: 3

DATE: JANUARY 31, 2020



NOTE: FIRE SERVICE AND CONNECTION PER FIRE SPRINKLER CONTRACTOR.



SECTION A–A
SCALE: 1"=10'

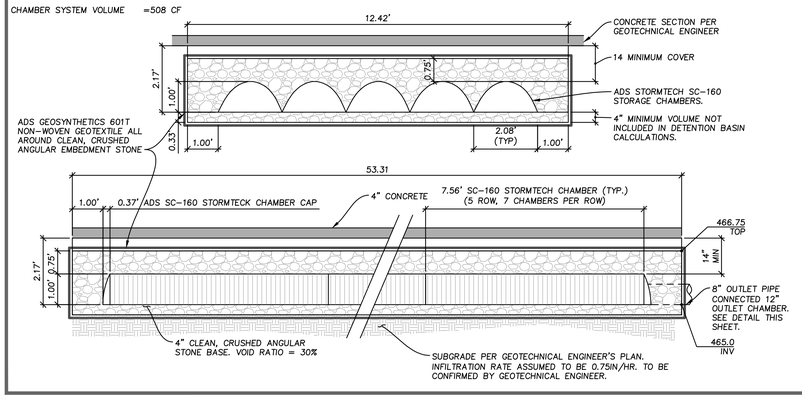
SC–160 CHAMBER SYSTEM AND INFILTRAITON AREA 1

DETENTION BASIN STORAGE

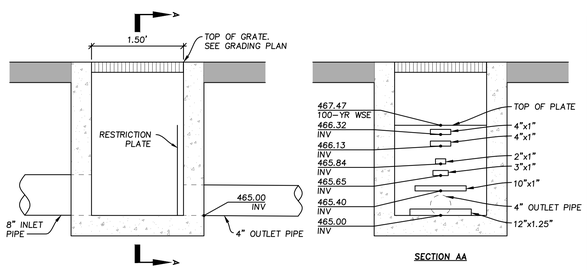
100– YEAR STORAGE VOLUME =455 CCF

REQUIRED VOLUME =455*10%+455 =501 CF

CHAMBER SYSTEM VOLUME =508 CF



DETENTION BASIN OUTLET DEVICE



PRE VS. POST PEAK FLOW

STORM EVENT	Q_{PRE}	DETENTION CHAMBER	
		Q_{IN}	Q_{OUT}
2–YEAR	**0.29**	0.38	**0.29**
5–YEAR	**0.53**	0.63	**0.53**
10–YEAR	**0.68**	0.79	**0.68**
25–YEAR	**0.88**	0.99	**0.88**
50–YEAR	**1.03**	1.13	**1.03**
100–YEAR	**1.17**	1.27	**1.17**

BUILDING STATISTICS

IMPERVIOUS AREA (SQ. FT.)	EXISTING	NEW	Δ
A. BUILDING	0	5,971 (36%)	+5,971
B. PATIO/WALK	0	1,151 (7%)	+1,151
C. DRIVEWAY/TRASH ENCLOSURE	0	6,120 (37%)	+6,120
D. SUB–TOTAL	0	13,062 (80%)	+13,062
PERVIOUS AREA (SQ. FT.)	EXISTING	NEW	Δ
E. LANDSCAPE	16,341 (100%)	3,297 (20%)	–13,062
F. SUB–TOTAL	16,341 (100%)	3,297 (20%)	–13,062
G. TOTAL	16,341	16,341	0

HYDROLOGIC SOIL GROUP – B (PER USGS WEB SOIL SURVEY)

NEW IMPERVIOUS AREA IS > 5000 S.F. AND < 15,000 S.F. ∴ PROJECT IS TIER 2.

CALCULATIONS DO NOT INCLUDE WORK DONE IN THE PUBLIC R.O.W.

PROJECT CLEAN WATER TIER II

SEE SIZING CALCULATOR BELOW FOR INFILTRATION PIT SIZING.

Central Coast Region Stormwater Control Measure Sizing Calculator

Version: 7/2/2018

1. Project Information

Project name:	17206	
Project location:	140 Mission Drive	
Tier 2/Tier 3:	Tier 2 - Treatment	
Design rainfall depth (in):	1.2	
Total project area (ft2):	13026	*Check Total DMA and SCM areas to ensure they match total project area*
Total DMA area (ft2):	13026	
Total new impervious area (ft2):	13026	
Total replaced impervious within a USA (ft2):		
Total replaced impervious not in a USA (ft2):		
Total pervious/landscape area (ft2):		
Total SCM area (ft2):	662	

2. DMA Characterization

Add DMA Row | Remove DMA Row

Name	DMA Type	Area (ft2)	Surface Type	New, Replaced?	Connection
roof	Drains to SCM	5791	Roof	New	Infiltration 1
Pavement	Drains to SCM	7271	Concrete or asphalt	New	Infiltration 1

DMA Summary Area

Total assigned DMA area (ft2):	13062
New impervious area (ft2):	13062
Replaced impervious within a USA (ft2):	0
Replaced impervious not in a USA (ft2):	0
Total pervious/landscape area (ft2):	0

3. SCM Characterization

Add SCM Row | Remove SCM Row

Name	SCM Type	Safety Factor	SCM Soil Type	Infilt. Rate (in/hr)	Area (ft2)	Flow Control Orifice?	Reservoir Depth (in)
Infiltration 1	Direct Infiltration	2	HSG A/B	0.75	662	No	

4. Run SBUH Model

Launch Model | Clear Results

5. SCM Minimum Sizing Requirements

SCM Name	Mininum SCM Area (ft2)
Infiltration 1	522

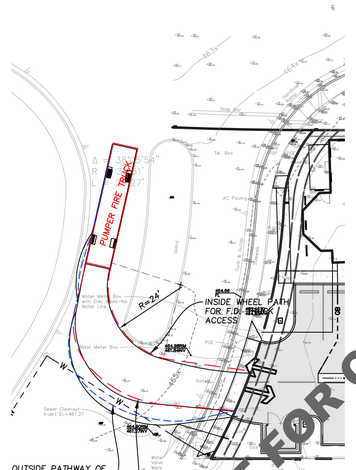
***GEOTECHNICAL ENGINEER TO CONFIRM INFILTRATION RATE TO CONFIRM LOCATION OF INFILTRATION BASIN 1 WILL NOT IMPACT BUILDING FOOTING.**

CITY OF SOLVANG CALIFORNIA

PLANNING COMMISSION APPROVED

This project has been approved by the Solvang Planning Commission and shall be utilized in conjunction with any conditions of approval for future building permits. Any deviations from this approved plan set may require an amendment to approved plans

DRIVEWAY ENTRANCE



NOT FOR CONSTRUCTION

SCALE: 1"=10'
0 10 20 30

COAST ENGINEERING & SURVEY, INC.
5553 HOLLISTER AVE. #5
GOLETA, CA 93117
PH: (805) 439-1920

REGISTERED PROFESSIONAL ENGINEER SCOTT T. VOSS No. 39392 CIVIL STATE OF CALIFORNIA

PRELIMINARY

REVISIONS: DATE: DESCRIPTION:

LOCATION: 1420 MISSION DRIVE SOLVANG, CA 93463 137–590–010
PROJECT NO. 17206
CLIENT 1420 MISSION DRIVE, LLC
DRAWN STS
CHECKED STS

1420 MISSION DRIVE, LLC DEVELOPMENT

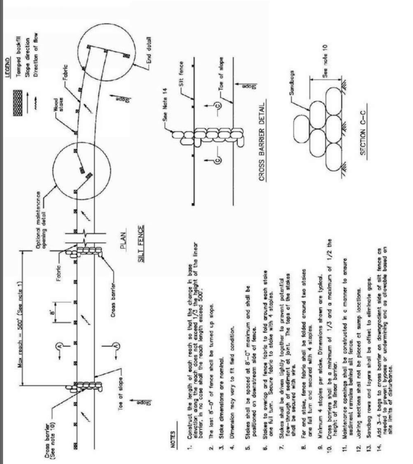
PRELIMINARY SITE IMPROVEMENTS PLAN

GRADING, DRAINGE PLAN, SECTIONS

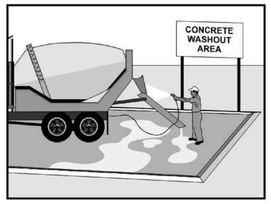
SHEET: C2 OF: 3

DATE: JANUARY 31, 2020

Silt Fence — SE-1



Concrete Waste Management — WM-8



Categories

- EC Erosion Control
- SE Sediment Control
- TC Tracking Control
- WE Wind Erosion Control
- NS Non-Stormwater Management Control ☒
- WM Waste Management and Materials Pollution Control ☑

Legend:
☑ Primary Category
☒ Secondary Category

Targeted Constituents

Sediment	☑
Nutrients	
Trash	
Metals	☑
Bacteria	
Oil and Grease	
Organics	

Potential Alternatives

None

If User/Subscriber modifies this fact sheet in any way, the CASQA name/logo and footer below must be removed from each page and not appear on the modified version.

Description and Purpose

Prevent the discharge of pollutants to stormwater from concrete waste by conducting washout onsite or offsite in a designated area, and by employee and subcontractor training.

The General Permit incorporates Numeric Action Levels (NAL) for pH (see Section 2 of this handbook to determine your project's risk level and if you are subject to these requirements).

Many types of construction materials, including mortar, concrete, stucco, cement and block and their associated wastes have basic chemical properties that can raise pH levels outside of the permitted range. Additional care should be taken when managing these materials to prevent them from coming into contact with stormwater flows and raising pH to levels outside the accepted range.

Suitable Applications

Concrete waste management procedures and practices are implemented on construction projects where:

- Concrete is used as a construction material or where concrete dust and debris result from demolition activities.
- Slurries containing portland cement concrete (PCC) are generated, such as from saw cutting, coring, grinding, grooving, and hydro-concrete demolition.
- Concrete trucks and other concrete-coated equipment are washed onsite.

Silt Fence — SE-1

Stabilized Construction Entrance/Exit — TC-1

CASQA CONSTRUCTION SITE BEST MANAGEMENT PRACTICES (BMP'S)

TEMPORARY SOIL STABILIZATION

- EC1 – SCHEDULING
- EC2 – PRESERVATION OF EXISTING VEGETATION
- EC3 – HYDRAULIC MULCH
- EC4 – HYDROSEEDING
- EC5 – SOIL BINDERS
- EC6 – STRAW MULCH
- EC7 – GEOTEXTILES, PLASTIC COVERS, & EROSION CONTROL BLANKETS/MATS
- EC8 – WOOD MULCHING
- EC9 – EARTH DIKES/DRAINAGE SWALES & LINED DITCHES
- EC10 – OUTLET PROTECTION/VELOCITY DISSIPATION DEVICES
- EC11 – SLOPE DRAINS
- EC12 – STREAMBANK STABILIZATION
- EC13 – RESERVED
- EC14 – COMPOST BLANKET
- EC15 – SOIL PREPARATION/ROUGHENING
- EC16 – NON-VEGETATIVE STABILIZATION

NON-STORMWATER MANAGEMENT

- NS1 – WATER CONSERVATION PRACTICES
- NS2 – DEWATERING OPERATIONS
- NS3 – PAVING AND GRINDING OPERATIONS
- NS4 – TEMPORARY STREAM CROSSING
- NS5 – CLEAR WATER DIVERSION
- NS6 – ILLICIT CONNECTION/ILLEGAL DISCHARGE DETECTION AND REPORTING
- NS7 – POTABLE WATER/IRRIGATION
- NS8 – VEHICLE AND EQUIPMENT CLEANING
- NS9 – VEHICLE AND EQUIPMENT FUELING
- NS10 – VEHICLE AND EQUIPMENT MAINTENANCE
- NS11 – PILE DRIVING OPERATIONS
- NS12 – CONCRETE CURING
- NS13 – CONCRETE FINISHING
- NS14 – MATERIAL OVER WATER
- NS15 – DEMOLITION OVER WATER
- NS16 – TEMPORARY BATCH PLANTS

TEMPORARY SEDIMENT CONTROL

- SE1 – SILT FENCE
- SE2 – SEDIMENT/DESILTING BASIN
- SE3 – SEDIMENT TRAP
- SE4 – CHECK DAM
- SE5 – FIBER ROLLS
- SE6 – GRAVEL BAG BERM
- SE7 – STREET SWEEPING AND VACUUMING
- SE8 – SANDBAG BARRIER
- SE9 – STRAW BALE BARRIER
- SE10 – STORM DRAIN INLET PROTECTION
- SE11 – ACTIVE TREATMENT SYSTEMS
- SE12 – MANUFACTURED LINEAR SEDIMENT CONTROLS (MLSC)
- SE13 – COMPOST SOCKS AND BERMS
- SE14 – BIOFILTER BAGS

TRACKING CONTROL

- TC1 – STABILIZED CONSTRUCTION ENTRANCE/EXIT
- TC2 – STABILIZED CONSTRUCTION ROADWAY
- TC3 – ENTRANCE/OUTLET TIRE WASH

WIND EROSION CONTROL

- WE1 – WIND EROSION CONTROL

WASTE MANAGEMENT AND MATERIALS POLLUTION CONTROL

- WM1 – MATERIAL DELIVERY AND STORAGE
- WM2 – MATERIAL USE
- WM3 – STOCKPILE MANAGEMENT
- WM4 – SPILL PREVENTION AND CONTROL
- WM5 – SOLID WASTE MANAGEMENT
- WM6 – HAZARDOUS WASTE MANAGEMENT
- WM7 – CONTAMINATED SOIL MANAGEMENT
- WM8 – CONCRETE WASTE MANAGEMENT
- WM9 – SANITARY/SEPTIC WASTE MANAGEMENT
- WM10 – LIQUID WASTE MANAGEMENT

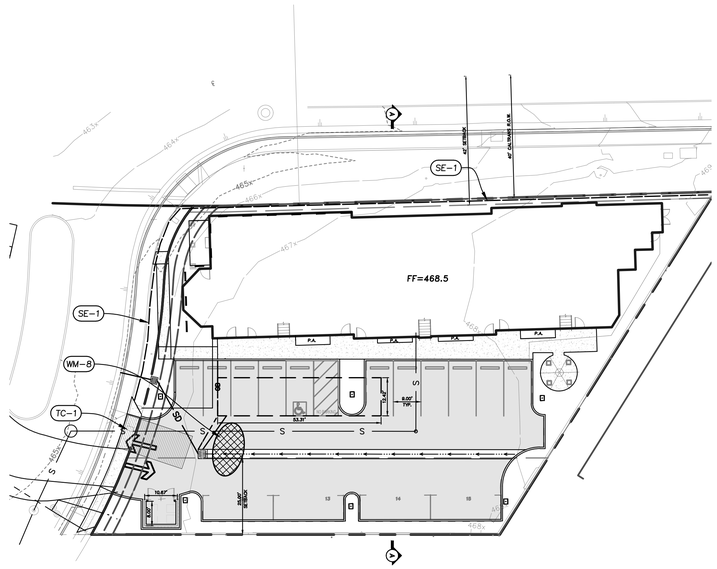
EROSION CONTROL NOTES

- WM-8 — CONSTRUCTION WASH-OUT AREA.
- SE-1 — CONSTRUCTION SILT FENCE.
- SE-5 — FIBER ROLLS
- TC-1 — STABILIZED CONSTRUCTION ENTRANCE/EXIT

LEGEND

EROSION CONTROL GENERAL NOTES

1. CONTRACTOR TO IMPLEMENT CONSTRUCTION BMP'S BELOW IN ACCORDANCE WITH THE CURRENT CASQA CONSTRUCTION BMP HANDBOOK AND WITH THE COUNTY OF SANTA BARBARA STANDARDS. SELECTED BMP'S ARE NOTED ABOVE.
2. BMP'S SHALL BE IMPLEMENTED BY THE CONTRACTOR(S) AS NECESSARY, WHETHER OR NOT SPECIFIED BY THESE PLANS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO IMPLEMENT BMP'S IN TIMELY MANNER.
3. BIOSWALE SHALL BE PROTECTED DURING CONSTRUCTION FROM SEDIMENT AND EROSION. HEAVY MACHINERY WILL NOT COMPACT SOILS IN AREAS OF INFILTRATION. IF ANY SEDIMENT DISCHARGES INTO LID FACILITY, CONTRACTOR SHALL RESTORE TO PERFORMANCE DESIGN SPECIFICATIONS AS VERIFIED BY CIVIL ENGINEER. CONTRACTOR SHALL NOTIFY GRADING OR BUILDING INSPECTOR 24-HOURS PRIOR TO INSTALLATION OF GRAVEL AND BIORETENTION SOIL TO VERIFY MATERIAL QUALITY.



PLANNING COMMISSION APPROVED

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NOT FOR CONSTRUCTION

SCALE: 1"=10'
0 10 20 30

COAST ENGINEERING & SURVEY, INC.
5553 HOLLISTER AVE. #5
GOLETA, CA. 93117
PH: (805) 439-1920

REGISTERED PROFESSIONAL ENGINEER SCOTT T. STEVENS No. 39292 CIVIL STATE OF CALIFORNIA

PRELIMINARY

REVISIONS: DATE: DESCRIPTION:

DRAWN STS CHECKED STS

LOCATION 1420 MISSION DRIVE SOLVANG, CA. 93463 137-590-010

PROJECT NO. 17206

CLIENT 1420 MISSION DRIVE, LLC

1420 MISSION DRIVE, LLC DEVELOPMENT
PRELIMINARY SITE IMPROVEMENTS PLAN
EROSION AND SEDIMENT COTNROL PLAN

SHEET: C3 OF: 3

DATE: JANUARY 31, 2020

5 SITE PHOTO - VIEW FROM NORTHEAST CORNER
N.T.S

4 SITE PHOTO - VIEW FROM MISSION DRIVE
N.T.S

3 SITE PHOTO - VIEW FROM NORTHWEST CORNER
N.T.S

2 SITE PHOTO - VIEW FROM SOUTHWEST CORNER
N.T.S

CITY OF SOLVANG CALIFORNIA

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1 SITE PLAN - AERIAL
N.T.S

KAMUS + KELLER
interiors | architecture
111 W. OCEAN BLVD.
SUITE 1500
LONG BEACH, CA
90802
P: 562.216.5244
WWW.KKAIA.COM

ISSUE DATE

MISSION DRIVE BOUTIQUE HOTEL
1420 MISSION DRIVE
SOLVANG, CA 93463

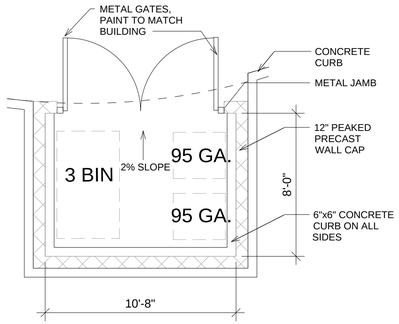
PROJECT NO.
19.0049

DRAWN/REVIEWED
DC/DK

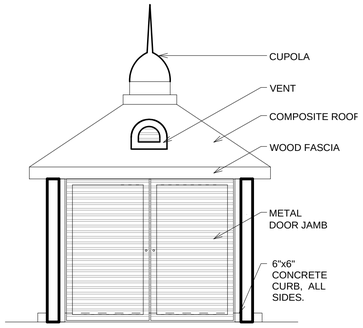
DATE/ISSUE
03.04.2020

SHEET TITLE
SITE PHOTO

SHEET NO.
A-0.0



2 TRASH ENCLOSURE ENLARGED PLAN
1/4" = 1'-0"



3 TRASH ENCL.FRONT ELEVATION
1/4" = 1'-0"

CITY OF SOLVANG CALIFORNIA

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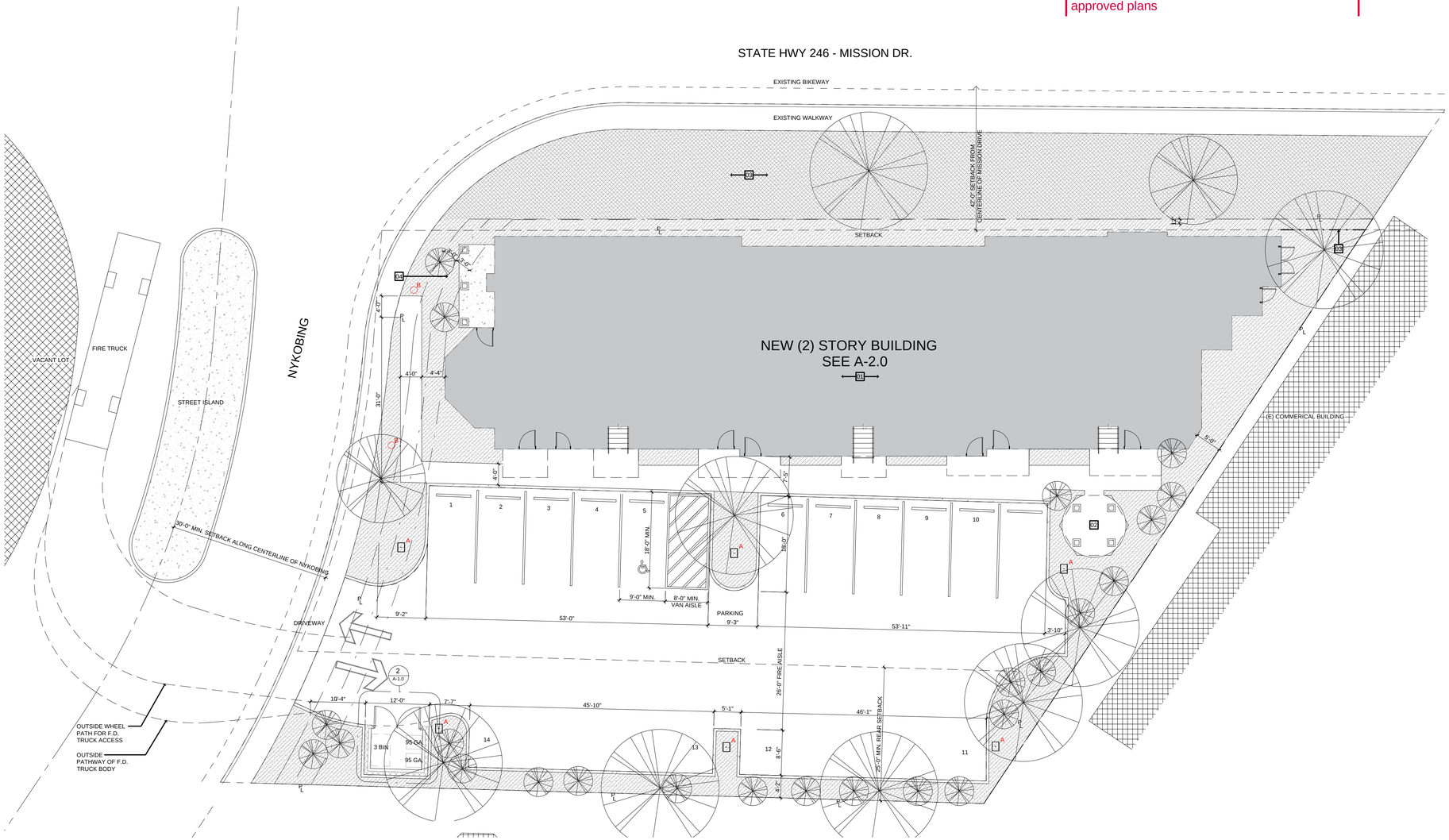
STATE HWY 246 - MISSION DR.



1 SITE PLAN
3/32" = 1'-0"

SITE PLAN LEGEND

- PROPERTY LINE
- SETBACK
- WROUGHT IRON FENCE
- LANDSCAPED AREA, SEE LANDSCAPE DRAWINGS
- LANDSCAPED AREA DEVOTED TO PUBLIC PURPOSES (2,763 SF)
- ASPHALT
- CONCRETE SIDEWALK
- EXISTING ADJACENT BUILDING
- NEW TREE, SEE LANDSCAPE DRAWING
- A — SINGLE POLE MOUNTED LIGHT FIXTURE. TO BE DARK SKY COMPLIANT (L-1), SEE SPECS ON SHEET A-4.0
- B — LIGHT BOLLARDS (L-2), SEE SPECS ON SHEET A-4.0

SITE PLAN KEYNOTES

01 BUILDING OUTLINE
02 GAZEBO
03 WROUGHT IRON FENCE
04 UTILITY EASEMENT

SITE PLAN GENERAL NOTES

1. MEASURES SHALL BE USED TO PREVENT OR REDUCE NUISANCE EFFECTS, SUCH AS NOISE, DUST, ODOR, SMOKE, FUMES, VIBRATION, GLARE, TRAFFIC CONGESTION AND TO PREVENT DANGER TO LIFE AND PROPERTY.
2. PROJECT IS SUBJECT TO THE STATE MODEL WATER EFFICIENT LANDSCAPE ORDINANCE. A LANDSCAPE DOCUMENT PACKAGE WILL BE REQUIRED WHEN THE APPLICANT SUBMITS CONSTRUCTION PLANS FOR REVIEW
3. BACKFLOW PREVENTION IS REQUIRED ON ALL CONNECTION TO THE PUBLIC WATER MAIN.
4. A SINGLE MASTER METER WILL BE INSTALLED OF THE SIZE SHOWN TO BE REASONABLE BASED ON WATER DEMAND CALCULATIONS PROVIDED BY THE APPLICANT. THE CALCULATION MUST INCLUDE MAXIMUM INSTANTANEOUS DEMAND IN GALLONS PER MINUTE (GPM) AND ANNUAL DEMAND IN ACRE FEET PER YEAR (AFY). SUB-METERS ARE REQUIRED DOWNSTREAM FROM THE CITY'S UTILITY METER. A BACKFLOW PREVENTION DEVICE MUST BE INSTALLED AS NEAR THE METER BOX AND PUBLIC RIGHT OF WAY AS POSSIBLE AND SHALL BE OPEN TO TEST AND INSPECTION BY THE CITY
5. A SEPARATE CONNECTION TO THE CITY'S MAIN IS REQUIRED FOR WATER SERVICE AND FACILITIES FOR BUILDING SPRINKLER SYSTEMS, HYDRANT, HOSE REELS AND OTHER FACILITIES INSTALLED ON PRIVATE PROPERTY FOR FIRE PROTECTION. AN APPROPRIATE BACKFLOW PREVENTION DEVICES MUST BE INSTALLED ON THE FIRE SERVICE LINE
6. PLANS FOR INSTALLED OF BACKFLOW PREVENTION DEVICES MUST BE APPROVED BY THE CITY CROSS CONNECTION INSPECTOR PRIOR TO INSTALLATION.
7. TESTING, REPAIR OR MAINTENANCE OF BACKFLOW PREVENTION ASSEMBLIES MAY BE PERFORMED BY CERTIFIED BACKFLOW PREVENTION ASSEMBLY TESTERS. THE OWNERS OF ANY PREMISES ON WHICH, OR ON ACCOUNT OF WHICH BACKFLOW PREVENTION ASSEMBLIES ARE INSTALLED, SHALL HAVE A BACKFLOW PREVENTION ASSEMBLIES TESTED BY A CERTIFIED BACKFLOW PREVENTION ASSEMBLIES TO THE CITY. BACKFLOW PREVENTION ASSEMBLIES MUST BE TESTED AT LEAST ANNUALLY AND IMMEDIATELY AFTER INSTALLATION, RELOCATION OR REPAIR.

ISSUE	DATE

KAMUS + KELLER
Interiors | Architecture
111 W. OCEAN BLVD.
SUITE 1700
LONG BEACH, CA
90802
P: 562.216.5244
WWW.KKAIA.COM

MISSION DRIVE BOUTIQUE HOTEL
1420 MISSION DRIVE
SOLVANG, CA 93463

PROJECT NO. 19.0049
DRAWN/REVIEWED DC/DK
DATE/ISSUE 03.04.2020
SHEET TITLE SITE PLAN
SHEET NO. A-1.0

1 1ST FLOOR
1/8" = 1'-0"

2 2ND FLOOR
1/8" = 1'-0"

FLOOR PLAN LEGEND

- DOOR AND FRAME
- WINDOW
- 1-HR FIRE RATED WALL ASSEMBLY
- FLOOR TO UNDERSIDE OF STRUCTURE ABOVE DEMISING WALL. WOOD STUDS PER STRUCTURAL AND STUCCO FINISH ON EXTERIOR SIDE. GYPSUM BOARD ON INTERIOR SIDE. GREEN BOARD TYPE AT WET AREAS.
- EXTERIOR WALL - WOOD STUDS PER STRUCTURAL AND STUCCO FINISH ON EXTERIOR SIDE
- INTERIOR PARTITION, FLOOR TO 6" ABOVE CEILING - WOOD STUDS PER STRUCTURAL AND 5/8" TYPE 'X' GYPSUM BOARD ON BOTH SIDES.
- LINE OF ROOF ABOVE

FLOOR PLAN KEYNOTE

01 ROOF LADDER
02 STAIR AND RAILING
03 NOT USED
04 TRELLIS BELOW
05 ENTRY PORCH ROOF BELOW

CITY OF SOLVANG CALIFORNIA

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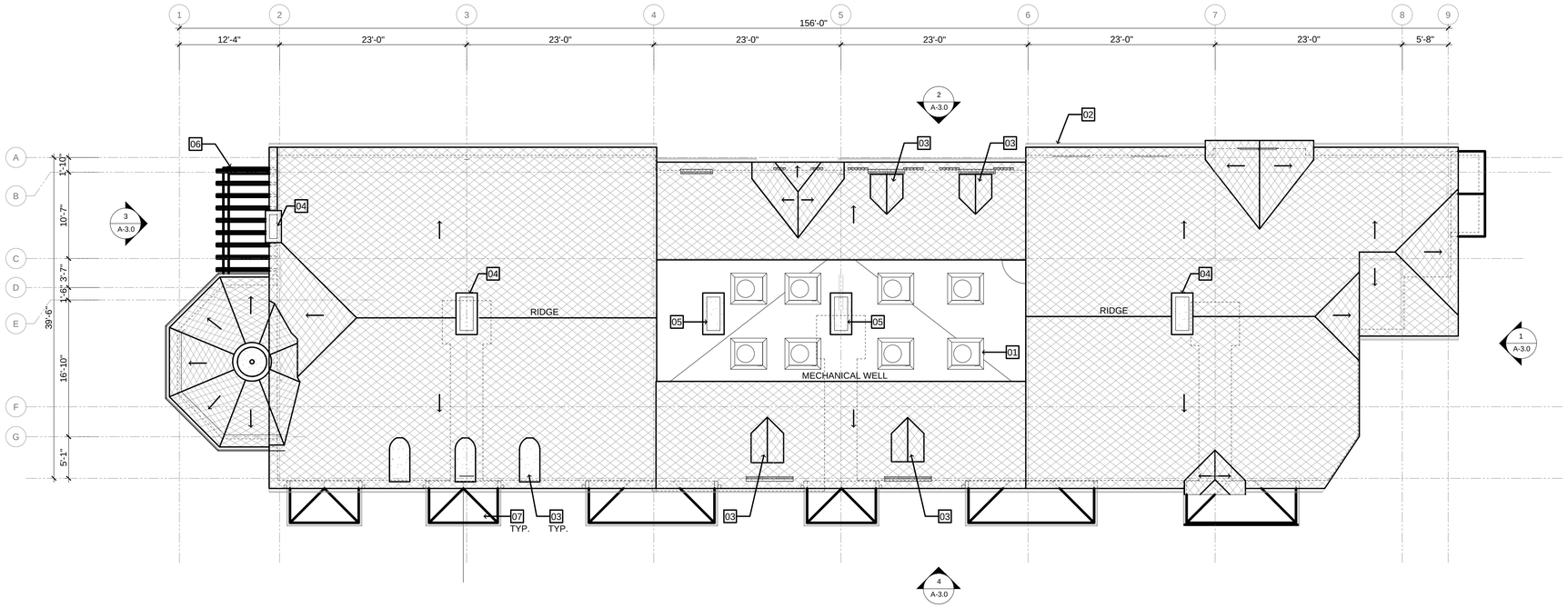
19.0049

DRAWN/REVIEWED
DC/DK

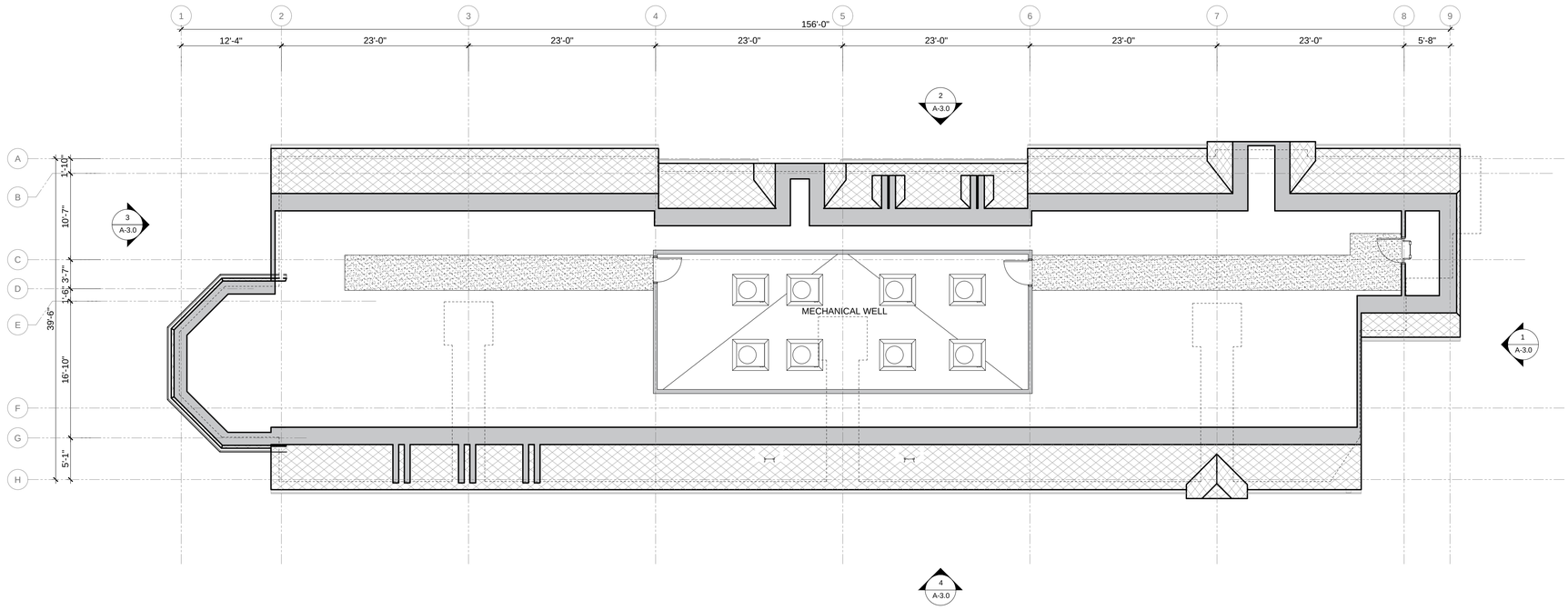
DATE/ISSUE
03.04.2020

SHEET TITLE
FLOOR PLAN

SHEET NO.
A-2.0



1 ROOF LEVEL
1/8" = 1'-0"



2 MECH LEVEL
1/8" = 1'-0"

ROOF PLAN LEGEND

- ROOFING SYSTEM
- MECHANICAL WELL ACCESS WALKWAY
- ROOF SLOPE
- LINE OF BUILDING BELOW

ROOF PLAN KEYNOTE

01 HVAC MECHANICAL UNITS, TYP.
02 ROOF GUTTER AND DOWNSPOUT, TYP.
03 DORMER
04 CHIMNEY
05 FALSE DECORATIVE CHIMNEY
06 TRELLIS BELOW
07 ENTRY PORCH ROOF BELOW

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DRAWN/REVIEWED
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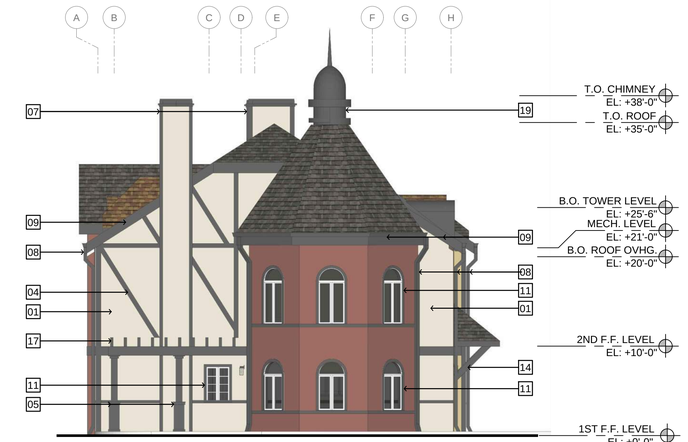
DATE/ISSUE
03.04.2020

SHEET TITLE
ROOF PLAN

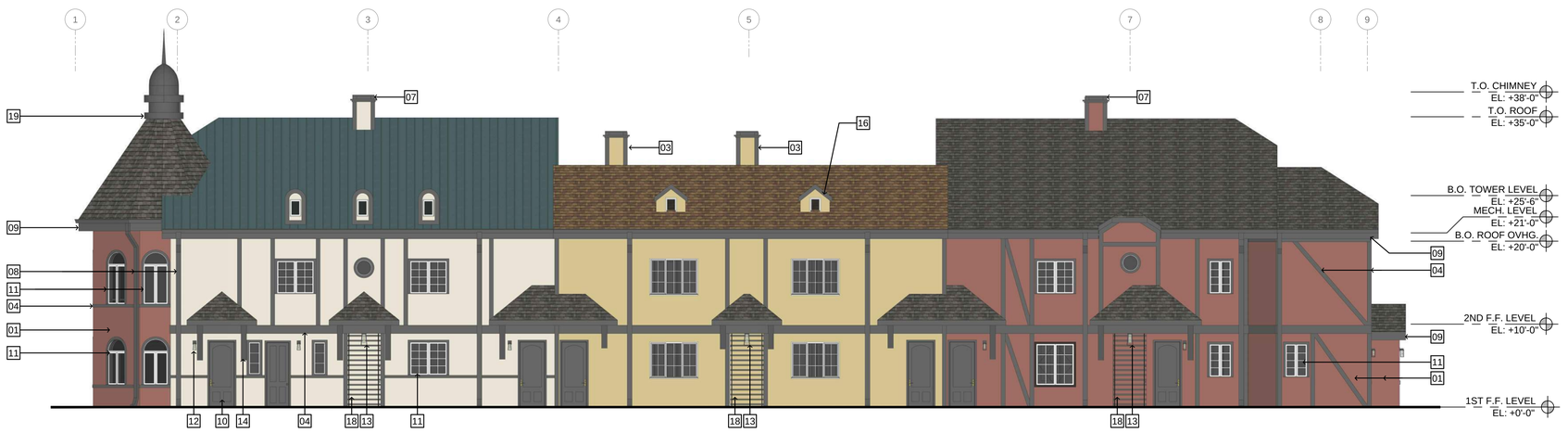
SHEET NO.
A-2.1



3 WEST EXTERIOR ELEVATION
1/8" = 1'-0"

1 EAST EXTERIOR ELEVATION
1/8" = 1'-0"

2 NORTH EXTERIOR ELEVATION
1/8" = 1'-0"



4 SOUTH EXTERIOR ELEVATION
1/8" = 1'-0"

ELEVATION LEGEND

- COMPOSITE SHAKE ROOFING SYSTEM
- COMPOSITE SHAKE ROOFING SYSTEM
- METAL ROOFING SYSTEM
- ACCENT PAINTED COLOR: PPG 1002-7 PHANTOM MIST
- BASE PAINTED COLOR: PPG 1088-5 OUTBACK
- BASE PAINTED COLOR: PPG 1093-3 HEARTH
- BASE PAINTED COLOR: PPG 1056-7 BRICK DUST

ELEVATION KEYNOTES

01 SMOOTH TROWEL 3-COAT EXTERIOR STUCCO SYSTEM OVER METAL LATH OVER "TYVEK" BUILDING WRAP OVER PLYWOOD SHEATHING PER STRUCTURAL DRAWINGS. PAINT.
02 SHUTTER AWNING OVER WINDOW
03 FALSE DECORATIVE CHIMNEY
04 DECORATIVE TRIM FEATURE WITH STUCCO FINISH, PAINT.
05 DECORATIVE COLUMN
06 WOOD COLUMNS AND TRELLIS, PAINT.
07 CHIMNEY
08 GUTTER AND DOWNSPOUT, TYP.
09 WOOD FASCIA, PAINT.
10 DOOR, PAINT.
11 WINDOW, TYP.
12 LIGHT FIXTURE (L-3) TYP., SEE SPECIFICATION ON SHEET A-4.0
13 LIGHT FIXTURE (L-4), TYP., SEE SPECIFICATION ON SHEET A-4.0
14 DECORATIVE COBEL
15 GAZEBO WITH CUPOLA
16 DORMER
17 WOOD TRELLIS, PAINT.
18 STAIR AND RAILING
19 CUPOLA

CITY OF SOLVANG CALIFORNIA

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ISSUE	DATE

KAMUS + KELLER
Interiors | Architecture
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SUITE 1750
LONG BEACH, CA
90802
P: 562.216.5244
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MISSION DRIVE BOUTIQUE HOTEL
1420 MISSION DRIVE
SOLVANG, CA 93463

PROJECT NO.
19.0049

DRAWN/REVIEWED
DC/DK

DATE/ISSUE
03.04.2020

SHEET TITLE
BUILDING ELEVATIONS

SHEET NO.
A-3.0

(L-3) WALL MOUNTED LIGHT FIXTURE.
(L-4) CEILING MOUNTED LIGHT FIXTURE.

General Information

Designers Fountain 31391-BZ
Bayport 1 Light 8 inch Bronze Wall Lantern

This casual silhouette and charm of a seaside haven truly makes a statement.

Brand Information
- Brand: Designers Fountain
- Collection: Bayport
- SKU: 31391-BZ
- UPC: 4635935175

Dimensions and Weight
- Length: 8.00 in.
- Width: 7.00 in.
- Height: 7.75 in.
- Extension/Depth: 8.00 in.
- Backplate/Canopy Width: 4.00 in.
- Backplate/Canopy Length: 4.00 in.
- Height from Center of Wall Opening: 4.00 in.
- Weight: 2.56 lb.

Other Specifications
- Ships Via: Ground (FREE SHIPPING)
- Warranty: 1yr

Additional Details
- Bayport 7" Wall Lantern - Dark Sky 7" Wall Lantern - Dark Sky
- Motion Detector: No
- Dual Mount: No
- Photocell: No
- Interior / Exterior: Exterior

Design Information
- Category: Outdoor Wall Lights
- Finish: Bronze
- Material: Cast Aluminum

Bulb Information
- Bulbs Included: No
- Dimmable: Yes
- Bulb Category: Incandescent
- Primary Bulb(s): 1 x 100 watts Medium Medium

Product Rating
- Voltage: 120V
- Outdoor Rating: Suitable for Damp Locations
- Safety Rating: ULCUL Wet
- Dark-Sky Approved

(L-1) SINGLE POLE MOUNTED LIGHT FIXTURE.
(L-2) LIGHT BOLLARD

General Information

Designers Fountain 31336-BZ
Bayport 1 Light 15 Inch Bronze Post Lantern

This casual silhouette and charm of a seaside haven truly makes a statement.

Brand Information
- Brand: Designers Fountain
- Collection: Bayport
- SKU: 31336-BZ
- UPC: 4635935212

Dimensions and Weight
- Length: 11.00 in.
- Width: 11.00 in.
- Height: 15.25 in.
- Weight: 4.30 lb.

Other Specifications
- Ships Via: Ground (FREE SHIPPING)
- Warranty: 1yr

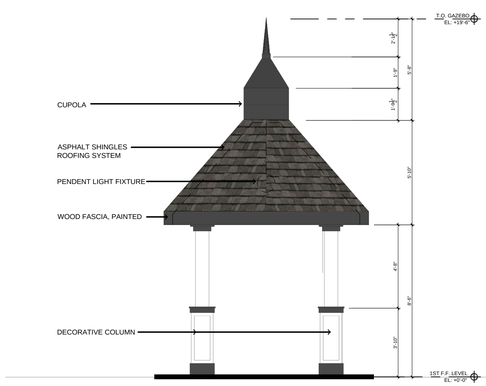
Additional Details
- Bayport 11" Post Lantern - Dark Sky 11" Post Lantern - Dark Sky
- Motion Detector: No
- Dual Mount: No
- Photocell: No
- Interior / Exterior: Exterior

Design Information
- Category: Post Lights & Accessories
- Finish: Bronze
- Material: Cast Aluminum

Bulb Information
- Bulbs Included: No
- Dimmable: Yes
- Bulb Category: Incandescent
- Primary Bulb(s): 1 x 100 watts Medium Medium

Product Rating
- Voltage: 120V
- Outdoor Rating: Suitable for Damp Locations
- Safety Rating: ULCUL Wet
- Dark-Sky Approved

4 LIGHTING SPEC
N.T.S.



3 GAZEBO DETAIL
1/2" = 1'-0"

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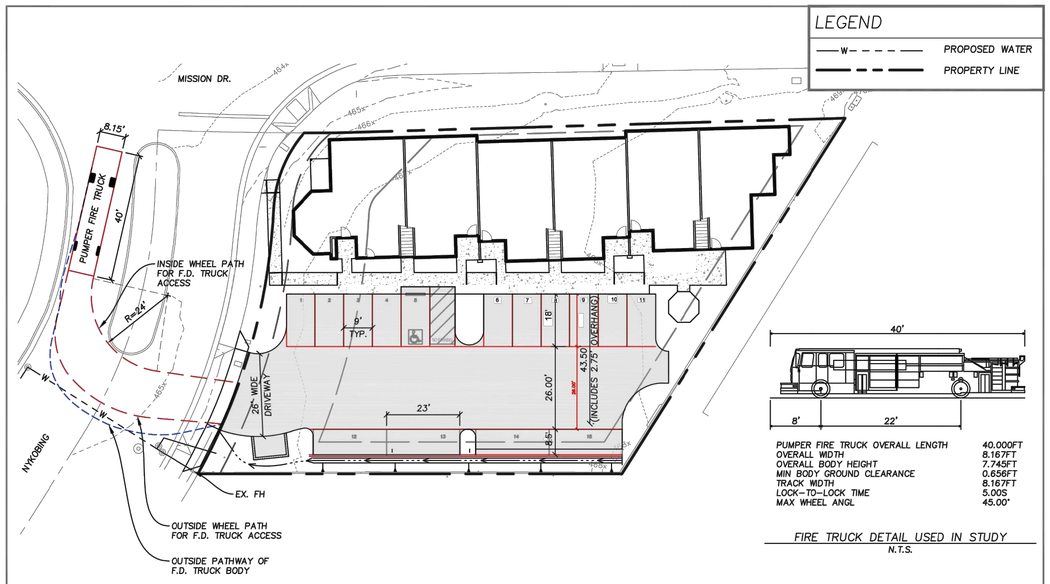


FIRE TRUCK DETAIL USED IN STUDY
N.T.S.

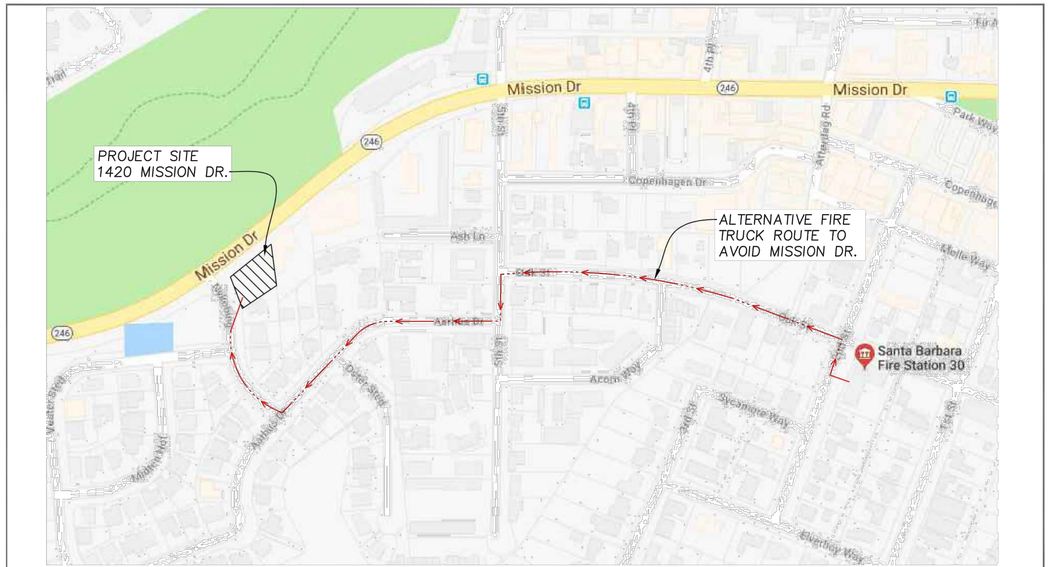
ACCESS PLAN
PARKING LOT DIMENSIONS ARE IN ACCORDANCE WITH SANTA BARBARA COUNTY MUNICIPAL CODE 35.36.120

COAST ENGINEERING & SURVEY, INC.
SCALE: 1"=20'

1420 MISSION DRIVE, LLC.
FIRE DEPARTMENT ACCESS STUDY
SITE IMPROVEMENTS
SEPTEMBER 11, 2018
SHEET 1 OF 2

SAVE DATE: 5/8/2019 12:49:08 PM
PLOT BY: Scott Smith
PLOT DATE: 7/25/2019 5:11:11 PM

2 FIRE DEPARTMENT ACCESS PLAN
N.T.S



VICINITY MAP

COAST ENGINEERING & SURVEY, INC.
N.T.S.

1420 MISSION DRIVE, LLC.
FIRE DEPARTMENT ACCESS STUDY
SITE IMPROVEMENTS
SEPTEMBER 11, 2018
SHEET 2 OF 2

SAVE DATE: 5/8/2019 12:49:08 PM
PLOT BY: Scott Smith
PLOT DATE: 7/25/2019 5:11:25 PM

1 FIRE DEPARTMENT ACCESS ROUTE
N.T.S

ISSUE	DATE

KAMUS + KELLER
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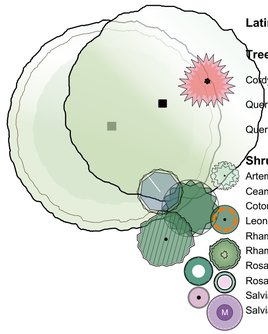
MISSION DRIVE BOUTIQUE HOTEL
1420 MISSION DRIVE
SOLVANG, CA 93463

PROJECT NO.	19.0049
DRAWN/REVIEWED	DC/DK
DATE/ISSUE	03.04.2020
SHEET TITLE	GAZEBO DETAILS, FIRE DEPT. EXHIBITS & LIGHTING SPEC.
SHEET NO.	A-4.0

Plant List



Latin Name	Common Name	Scheduled Size	Qty.	Notes
Trees				
Cordyline a. 'Red Star'	Red Star Cordyline	15g	3	
Quercus agrifolia	Coast Live Oak	24" box	3	
Quercus tomentella	Island Oak	24" box	3	
Shrubs				
Artemisia californica 'Canyon Gray'	Coastal Sagebrush	1 gal	4	ToL
Ceanothus 'Centennial'	NCN	1 gal	2	SMG
Cotoneaster lacteus	Cotoneaster	15 gal	11	to match existing
Leonotis leonurus	Lion's Tail	1 gal	2	
Rhamnus a. 'John Edwards'	Italian Buckthorn	15 gal	2	NS
Rhamnus californica 'Mound San Bruno'	Coffeeberry	5 gal	17	
Rosa 'Iceberg'	Rose	5 gal	3	
Rosa 'The Fairy'	The Fairy Rose	5 gal	13	
Salvia c. 'Winifred Gilman'	Sage	1 gal	16	ToL
Salvia leucantha 'Midnight'	Mexican Bush Sage	1 gal	8	

Perennials				
Calylophus hartwegii fendleri	Sierra Sundrops	1 gal	14	
Dietes bicolor	Fortnight Lily	1 gal	17	
Dietes iridioides	African Iris	1 gal	32	
Echium candicans 'Star of Madeira'	Star of Madeira	1 gal	1	
Lavandula 'Goodwins Creek'	Lavender	1 gal	19	NS, MBN
Rosmarinus officinalis 'Tuscan Blue'	Rosemary	1 gal	5	
Grasses				
Festuca idahoensis 'Siskiyou Blue'	Siskiyou Blue Fescue	1 gal	7	
Leymus c. 'Canyon Prince' (Elymus c.)	Wild Rye	1 gal	9	
Pennisetum 'Fairy Tails'	Evergreen Fountain Grass	1 gal	14	
Pennisetum s. 'Rubrum'	Fountain Grass	1 gal	8	
Cacti & Succulents				
Agave a. 'Mediopicta Alba'	Century Plant	5 gal	1	
Aloe striata	Coral Aloe	1 gal	9	
Vines				
Ficus pumila	Creeping Fig	1 gal	4	MBN
Vitis sp	Grape Vines	1 gal	8' OC	

CITY OF SOLVANG CALIFORNIA

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planting notes

Important note: All plant materials shall be set out as shown on plan. Final locations shall be approved by the Owner/Landscape Architect prior to planting.

1. Prior to starting work, Contractor shall take representative soil samples from the project site. Soil shall be analyzed by an approved commercial soil testing laboratory to produce **Soil Management Report**. (Fruit Growers Laboratories, PO Box 272/856 Corporation Street, Santa Paula, CA, 93061, 805.659.0910), or equal, for suitability for ornamental planting. A copy of the results of this analysis shall be submitted to the Owner and Landscape Architect. Contractor shall follow the recommendations of the soils lab as to the rate and analysis of fertilizer & amendments to provide a suitable medium for planting. The Contractor shall notify the Owner/Landscape Architect of any potential problems which may result due to harmful substances found in the soil. Failure to act as specified may result in the Contractor assuming financial responsibility for any damage to plants.

Total Irrigated Landscape Area = 23,198 SF

2. Contractor shall clear and grub all planting areas, removing all weed growth, unwanted soil debris (rocks over 1-1/2" in diameter, sticks) and construction debris (plaster, concrete, debris), prior to installation of plant materials.

3. All plants are identified by typical symbols and quantities in each area. Plant quantities indicated on the plan are approximate and are provided for the convenience of the contractor. It shall be the responsibility of the contractor to confirm all plant quantities prior to bidding. In the event of discrepancies in plant count, quantities indicated by plant symbols shall prevail.

4. As noted above, all plant materials shall be set out as shown on plan. Final locations shall be approved by the Owner/Landscape Architect prior to planting. Owner/Landscape Architect shall be given 48 hours prior notice for approving plant locations.

5. "Tri-C" Myco Pak-mycorrhizal packets, or approved equal, shall be applied equally around rootball making sure contact is achieved between plant roots and Myco Pak(s), at the following rates:
1 gallon plants: 1 paks
5 gallon plants: 3 paks
15 gallon plants: 7 paks
24" box: 11 paks, 36" box: 17 paks, 48" box: 21 paks,

Contact information: Tri-C Enterprises, LLC, box 1367, Chino, CA 91708-1367. Tel: 1-800-927-3311

6. Contractor shall provide and install 2" of mulch MIN. in all planted areas unless area is turf, hydroseeded (hydroseed has it's own mulch component) or otherwise noted. Mulch to be organic, 1/2 inch-1 inch. Mulch shall be spread evenly. Contractor to provide Owner/Landscape Architect with samples of mulch for approval prior to installation.

7. All plant material installed from containers to have gopher baskets, unless material is container is smaller than 1 gal.

8. No new Oaks to be limbed up. Select for full skirt, low branching.

Project No. **17-10**

bcla incorporated
landscape architecture ~ planning
po box 76
buellton, ca 93427
ph/fax: 805.693.9334
m: 805.689.9910
BC_LA@comcast.net
CL# 4360

LICENSED LANDSCAPE ARCHITECT
Zachary Clough #4360
Exp. 1/31/2020
Renewal Date
1/31/2020
Date
STATE OF CALIFORNIA

Revisions:

#	NAME	DATE

1420 Mission Drive LLC
1420 Mission Drive
Solvang CA 93463

Submittal Date:
Jan 31, 2020

Drawn By:

#	NAME	DATE
	BC	1/2020

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Title:
Landscape Plan
Planting Notes
& Plant List

Sheet Number:
L-1

CITY OF SOLVANG
WATER EFFICIENT LANDSCAPE WORKSHEET

1644 OAK STREET SOLVANG, CA 93463 • 805.688.5575

City of Solvang Reference Evapotranspiration (ETo): 45.6

Hydrozone # /Planting Description a	Plant Factor (PF)	Irrigation Method b	Irrigation Efficiency (IE)	ETAF (PF/IE)	Landscape Area (sq. ft.)	ETAF x Area	Estimated Total Water Use (ETWU) d
Regular Landscape							
Mixed (low/very low)	0.1	drip	0.81	0.12	2,376.00	293.33	8,293.12
Mixed (low/medium)	0.4	drip	0.81	0.49	399.00	197.04	5,570.63
Medium	0.5	drip	0.81	0.62	2,250.00	1,388.89	39,266.67
				Totals	5,025.00	1,879.26	53,130.42
Special Landscape Areas							
				1	-	-	-
				1		-	-
				1		-	-
				1		-	-
Totals					-	-	-
ETWU Total d							**53,130.42**
Maximum Allowed Water Allowance (MAWA)e							**63,930.06**

a Hydrozone #/Planting Description

E.g
1.) front lawn
2.) low water use plantings

b Irrigation Method

overhead spray
or drip

c Irrigation Efficiency

0.75 for spray head
0.81 for drip

d ETWU (Annual Gallons Required)

= Eto x 0.62 x ETAF x Area

where 0.62 is a conversion factor that converts acre-inches per acre per year to gallons per square foot per year.

e MAWA (Annual Gallons Allowed)

= (Eto) (0.62) [(ETAF x LA) + ((1-ETAF) x SLA)]

where 0.62 is a conversion factor that converts acre- inches per acre per year to gallons per square foot per year, LA is the total landscape area in square feet, SLA is the total special landscape area in square feet, and ETAF is .55 for residential areas and 0.45 for non-residential areas.

ETAF Calculations:

Average ETAF for Regular Landscape Areas must be 0.55 or below for residential areas, and 0.45 or below for non-residential areas. Used: 0.45

All Landscape Areas

Total ETAF x Area (B+D)	**1,879.26**
Total Area (A+C)	**5,025.00**
Sitewide ETAF (B+D) ÷ (A+C)	**0.37**

Regular Landscape Areas

Total ETAF x Area (B)	**1,879.26**
Total Area (A)	**5,025.00**
Average ETAF (B ÷ A)	**0.37**

irrigation notes

note:
Also refer to the irrigation equipment schedule and details. **call landscape architect 48 hours in advance of all pressure testing, coverage tests, or similar onsite observations.**

1. This plan is diagrammatic. all pipes, valves, etc. shown within paved areas are for design clarification only and shall be installed in planting areas wherever possible. avoid pipe layout that will conflict with proposed tree, vine and shrub planting.

2. Do not install the sprinkler system as indicated on the drawings when it is obvious in the field that obstructions or grade differences exist and should be brought to the attention of the owner's authorized representative.

3. See irrigation equipment schedule for a complete description of all symbols shown on the irrigation plans. mount controller per plan.

4. Irrigation system is designed assuming a static water pressure of approximately **65** PSI at point-of-connection. prior to installation of irrigation system, contractor shall verify pressure at point-of-connection and report any discrepancies to the landscape architect. add pressure regulator if necessary.

5. It is the intent of this plan to provide adequate irrigation to all planting areas. contractor shall be responsible for making any and all adjustments to the irrigation system necessary to insure 100% irrigation coverage of all planting areas.

6. Install the irrigation system in accordance with all local codes.

7. Piping installed under pathways or paved areas, through walls or footings shall be placed inside schedule 40 PVC sleeves of adequate size to allow free movement of the pipe in the sleeve. provide sleeving for mainline below driveways, sidewalks, and walls.

8. Adjust flow controls for proper performance and valve longevity.

9. Emitters shall be pressure-compensating and shall be surface located a maximum of 6" (six inches) from the center of the plant, or at edge of rootball (whichever is greater).

10. Install flush end valves at the ends of all polyethylene drip pipe in round valve boxes with gravel fill, in planting area. coordinate location with landscape architect.

11. Limit disturbance to rootzone of existing trees by installing piping at the edges of planters where possible. Do not trench across the rootzone of existing trees.

12. Clean up on a daily basis per owner's representative's requirements.

13. Irrigation lines shall be buried at the following minimum depths:
drip tubing: scratched in 2" MIN.
PVC pressure mainline:18"
PVC lateral line:12"
PVC lines 2-1/2" or larger: 24"

14. Coordinate location of heads, valves and pipes with the planting.

15. Check valves shall be installed as required at low ends of irrigation lines to prevent draining of irrigation lines.

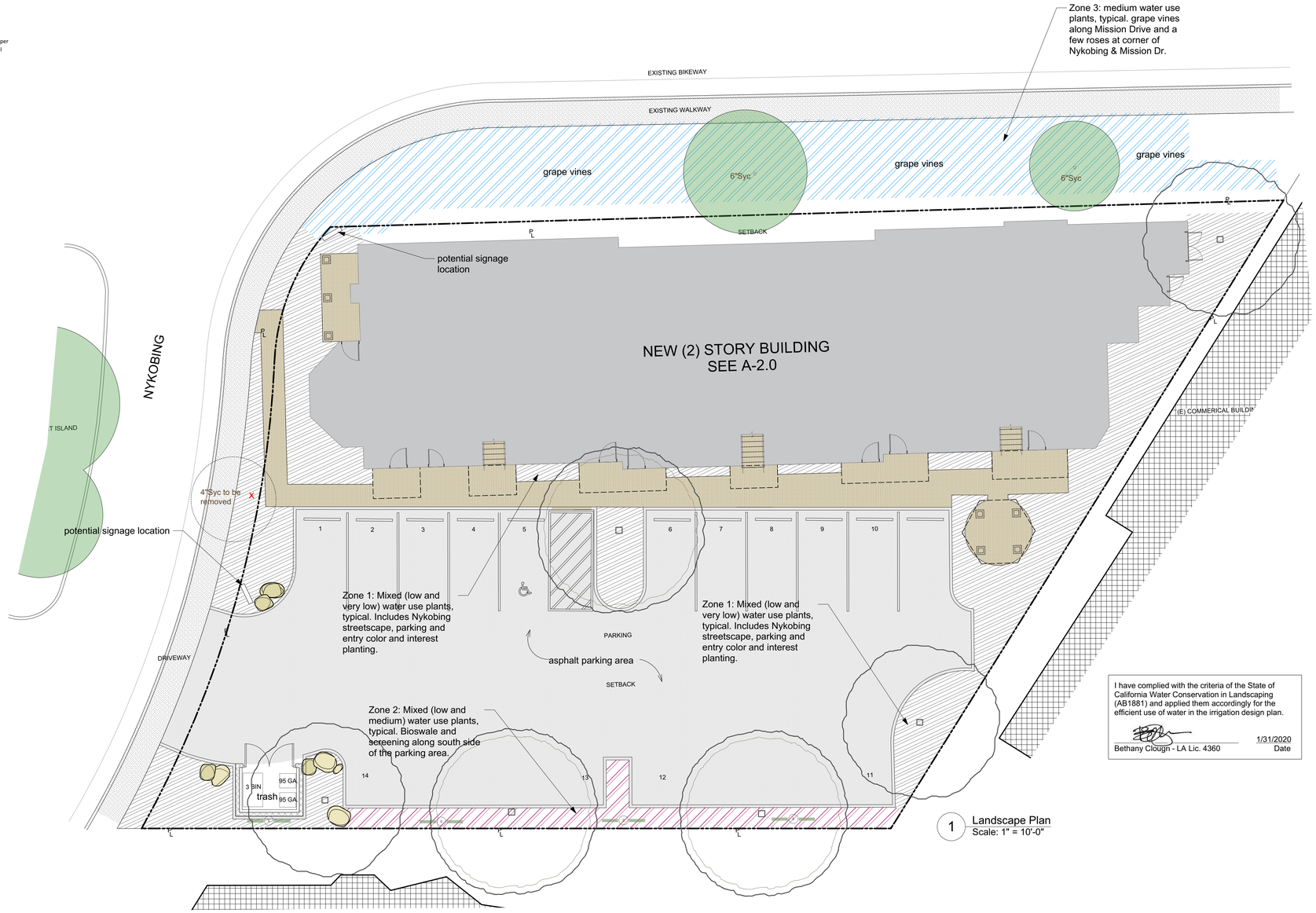
16. Backflow protection is existing (verify location in field).

irrigation system design criteria:
assumed new 1" backflow preventer, **assumed** 65 PSI static pressure.
maximum flow = 5 ft/sec. velocity in main line and lateral pipe.

CITY OF SOLVANG CALIFORNIA

PLANNING COMMISSION APPROVED

This project has been approved by the Solvang Planning Commission and shall be utilized in conjunction with any conditions of approval for future building permits. Any deviations from this approved plan set may require an amendment to approved plans



1 Landscape Plan
Scale: 1" = 10'-0"

I have complied with the criteria of the State of California Water Conservation in Landscaping (AB1881) and applied them accordingly for the efficient use of water in the irrigation design plan.

Bethany Clough - LA Lic. 4360 — 1/31/2020 Date

Project No. **17-10**

bcla incorporated
landscape architecture ~ planning
po box 76
buellton, ca 93427
ph/fax: 805.693.9334
m: 805.689.9910
BC_LA@comcast.net
CL# 4360

LICENSED LANDSCAPE ARCHITECT
Bethany Clough #4360
Signature
Bethany Clough
Name
1/31/2020
Date
STATE OF CALIFORNIA

Revisions:
NAME DATE

1420 Mission Drive LLC
1420 Mission Drive
Solvang CA 93463

Submittal Date:
Jan 29, 2020

Drawn By:
NAME DATE
BC 1/2020

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Title:
Irrigation Plan
WELO Calcs

Sheet Number:
L-2

PLANNING COMMISSION APPROVED

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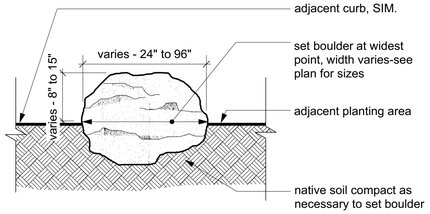
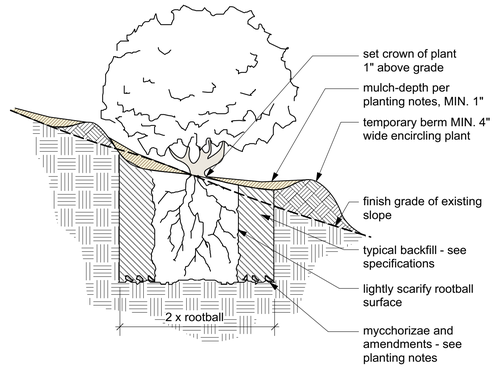
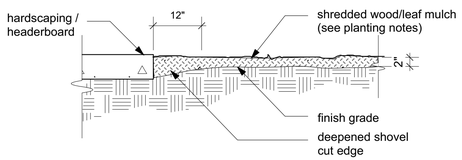


notes:
1. all sandstone boulders to be collected from sources within the Santa Barbara County area, finish: naturally occuring patina.
2. all siting of sandstone boulders to be coordinated between Contractor and Landscape Architect.

6 Boulder Setting
Scale: 1" = 1'-0"



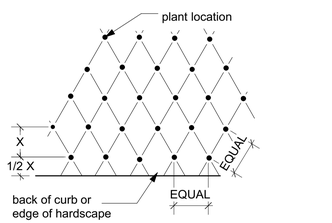
3 Shrub Installation (on slope)
Scale: 1" = 1'-0"



Note:
mulch under trees and shrubs & blend into ground cover areas

5 Mulch
Scale: 1" = 1'-0"

2 Shrub Installation
Scale: 1" = 1'-0"



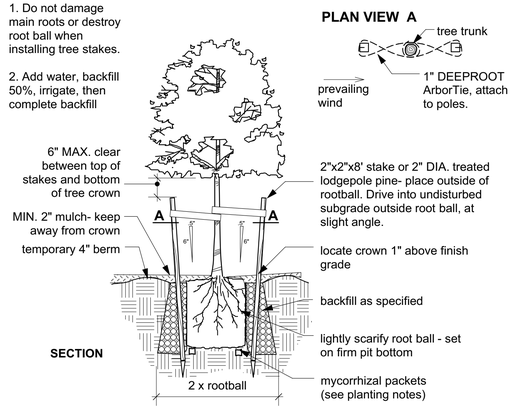
* all shrubs and ground covers to be planted at equal spacing (triangular) unless otherwise indicated on the plans - see planting plan callouts for spacing requirements

4 Groundcover and Shrub Spacing
Scale: 1" = 1'-0"

NOTES:

1. Do not damage main roots or destroy root ball when installing tree stakes.

2. Add water, backfill 50%, irrigate, then complete backfill



1 Tree W/Stakes
Scale: 1" = 1'-0"

Project No. 17-10

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LICENSED LANDSCAPE ARCHITECT
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Renewal Date
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Title:
Landscape Details

Sheet Number:
L-3

Attachment A

PC RESOLUTION NO. 20-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SOLVANG APPROVING DEVELOPMENT PLAN FOR A 11 UNIT BOUTIQUE HOTEL 1420 MISSION DRIVE APN 137-590-010 AND TO ACCEPT THE EXEMPTION PURSUANT TO SECTION 15332 OF THE STATE GUIDELINES FOR THE IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

THE PLANNING COMMISSION OF THE CITY OF SOLVANG HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the Planning Commission of the City of Solvang has considered the Development Plan for a 11 Unit Boutique Hotel.

WHEREAS, the Planning Commission has held a duly noticed public hearings on November 2, 2020 regarding the subject Development Plan, at which time all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission has reviewed this project in compliance with the California Environmental Quality Act (CEQA) and has determined that the project is Categorically Exempt pursuant to Section 15332, and directs staff to prepare and file a Notice of Exemption; and

WHEREAS, the Planning Commission finds after due study, deliberation and public hearing that the following circumstances exist:

1. That the site for the project is adequate in size, shape, location and physical characteristics to accommodate the type of use and level of development proposed;

2. That the project qualifies to be found categorically exempt from environmental review in accordance with the California Environmental Quality Act (CEQA Guidelines Section 15332);

3. That streets and highways are adequate and properly designed;

4. That there are adequate public services, including but not limited to fire protection, water supply, wastewater disposal, and police protection to serve the project;

5. That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area;

6. That the project is in conformance with the applicable provisions and policies of this Title and the General Plan.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Solvang hereby approves said Development Plan subject to the attached Conditions of Approval contained in the proposed Exhibit A.

On motion by Commissioner Williams and seconded by Commissioner Gold, the foregoing Resolution is hereby **adopted** by the following vote:

AYES: Jack Williams, Scott Gold and David Brents

NOES: 0

ABSENT: Aaron Petersen, Justin Rodriquez

DATE: November 2, 2020

APPROVED AS TO CONTENT:

Xenia Bradford
Planning Department Director

APPROVED:

Jack Williams
Planning Commission Chair

Exhibit A

Recorded in Official Records
County of Santa Barbara

JOSEPH E. HOLLAND
County Clerk-Recorder

DOC # 2021-0034090

04/30/2021 Titles: 1 Pages: 20
03:31 PM
SBC Fees: $71.00
Taxes: $0.00
E31 CA SB2 Fee: $0.00
Total: $71.00

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Solvang
411 Second Street
Solvang, CA 93463
Attention: L. Tamura

CITY OF SOLVANG

AGREEMENT TO COMPLY WITH CONDITIONS OF APPROVAL

OWNER(S) own real property currently identified as Assessor Parcel Number 137-590-010, hereinafter referred to as the PROPERTY, located at 1420 Mission Drive and more particularly described by the legal description in attached Exhibit A.

MONITORING AND REPORTING. This agreement is made to ensure that all conditions of approval for *Development Plan for 1420 Mission Drive Boutique Hotel* listed in Exhibit B, attached hereto, are complied with and that all monitoring and reporting actions required of the OWNER(S) shall be fulfilled.

OWNER(S) hereby agrees to allow the City or its representatives onto the PROPERTY to monitor and ensure compliance with all conditions of approval and/or to gather information relevant for reporting purposes and compliance with the conditions of approval.

FEES. The OWNER(S) understands and agrees that they shall promptly pay all fees for monitoring compliance or enforcing conditions charged on an hourly basis pursuant to City Council Resolution 12-905.

PENALTIES FOR NON-COMPLIANCE. OWNER(S) acknowledges that the City of Solvang retains the right to bring any action which it determines is necessary to require compliance by OWNER with all conditions of approval. The City of Solvang further retains the right to seek all remedies and sanctions for non-compliance, either criminal or civil, as may be provided for by law.

This agreement shall be recorded in the Official Records of Santa Barbara County and shall serve as notice of the restrictions and obligations contained herein to OWNER(S), all encumbrancers, and the successors and assigns in interest of OWNER(S). This agreement shall affect the title and possession of the PROPERTY. All restrictions and obligations contained herein are to run with the land or any portion hereof and shall be binding upon the successors and assigns of OWNER(S) regardless of how their interest is obtained. The OWNER(S) and their successors and assigns may be released from this agreement if the relevant permit has expired and the OWNER(S) has not performed substantial work in reliance upon the permit.

By signing this document, the OWNER(S) agrees to comply with all conditions of approval as listed in Exhibit B, attached hereto.

I (WE) accept and agree to all terms, restrictions and obligations set forth in this agreement either expressly or by reference and incorporation.

Executed at Solvang, California on the 30th day of March, 2021.

OWNER

By _____
(~~Signature must~~ be notarized)

Jake Rodriguez

CALIFORNIA NOTARY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Barbara

On March 30, 2021 before me, Christian Torchia, Notary Public (insert name and title of the officer), personally appeared

Jake Albert Rodriguez,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____. (Seal)

CHRISTIAN TORCHIA
Notary Public - California
Santa Barbara County
Commission # 2293513
My Comm. Expires Jun 16, 2023

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EXHIBIT A

Legal Description of Property

LEGAL DESCRIPTION

For APN/Parcel ID(s): 137-590-010

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SOLVANG, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 82 of Tract 13,821, in the City of Solvang, County of Santa Barbara, State of California, as shown on map recorded in Book 153, Pages 30-34 of Maps, in the Office of the County Recorder of said County.

EXHIBIT B

CONDITIONS OF APPROVAL

1420 Mission Drive Boutique Hotel
November 2, 2020

FINAL CONDITIONS OF APPROVAL

1420 Mission Drive Boutique Hotel Development Plan

APN 137-590-010

November 2, 2020

The following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be recorded with the Development Plan on an "Agreement to Comply" which shall be reviewed as to form and content by the City Attorney.

A. PROJECT DESCRIPTION

A-1. This Development Plan is based upon and limited to compliance with the project description, the hearing exhibits marked "Planning Commission Exhibit", dated November 2, 2020 and Conditions of Approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the City for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.

The project description is as follows:

The applicant requests approval of a Development Plan to develop an 11-suite boutique hotel. This hotel consists of nine 2-bedroom units and two 3-bedroom units. The site included 15 parking space and landscaped open space.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto.

All plans must be submitted for review and approval and shall be implemented as approved by the City of Solvang.

A-2. **Compliance with the Law:** The applicant shall ascertain and comply with all Federal, State, County and City requirements as are applicable to this project.

B. Standard conditions

B-1 APCD Grading Conditions:

a. All dirt stock pile areas shall be sprayed daily and covered with tarps or other dust barriers as needed;
b. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading shall be sown with a fast germinating, non-invasive, grass seed and watered until vegetation is established;
c. All disturbed soil areas not subject to revegetation shall be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD;

d. All roadways, driveways, sidewalks, etc. to be paved shall be completed as soon as possible. In addition, building pads shall be laid as soon as possible after grading unless seeding or soil binders are used;
e. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;
f. All trucks hauling dirt, sand, soil, or other loose materials shall be covered or shall maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with CVC Section 23114;
g. Wheel washers and/or rumble strips shall be installed where vehicles enter and exit unpaved roads onto streets; and
h. The contractor or builder shall designate a person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, and reduce visible emissions below the APCD's limit of 20% opacity for greater than 3 minutes in any 60-minute period. The name and telephone number of such persons shall be provided to APCD Engineering & Compliance Division prior to the start of any grading, earthwork or demolition.

B-2. Construction Hours. Unless otherwise provided for in a validity issued permit or approval, noise-generating construction activities shall be limited to the hours of 7:30am and 5:30pm. Noise-generating construction activities shall not occur on Saturdays, Sundays and state or national holidays. Indoor activities can occur on the weekends along as there is no outdoor noise.

B-3. Construction Equipment Noise. Construction equipment shall be properly maintained and equipped with noise-reduction intake and exhausted mufflers and engine shrouds, in accordance with manufacturers' recommendations. Equipment engine shrouds should be closed during equipment operation.

C. PROJECT SPECIFIC CONDITIONS:

C-1. **Water Efficient Landscaping**. To improve water conservation, the Owner/Applicant shall include the following in Landscape and Irrigation Plans to be approved by the Planning Department and Branding and Design Committee (if existing):

A. Landscaping that reduces water use:
1. Landscape with native and low water demand plant species;
2. Group plant material by water needs;
3. Turf shall constitute less than 20% of the total landscaped area;
4. No turf shall be allowed on slopes of over 4%;
5. Extensive mulching (2" minimum) shall be used in all landscaped areas to reduce evaporation.

B. Install drip irrigation or other water-conserving irrigation.
C. Use permeable surfaces for hardscape to the maximum extent feasible.

C-2. **Signage**. No signs of any type are approved with this action unless otherwise specified. All signs shall be reviewed and approved by the Planning Department Staff and the Branding and Design Committee (if existing)

C-3. **Additional Permits Required**: Before using any land or structure, or commencing any work pertaining to the erection, moving, alteration, enlarging, or rebuilding of any building, structure, or improvement, the applicant shall obtain a Land Use and Building, and/or Grading Permit(s) from the Solvang City Planning and Building Department. These Permits are required by ordinance and are necessary to ensure implementation of the conditions required by the Planning Commission. Before the City will issue any permit, the applicant must obtain written clearance from all departments having conditions; such clearance shall indicate that the applicant has satisfied all pre-construction conditions.

C-4. **Exterior Lighting.** The Owner/Applicant shall ensure any exterior night lighting installed on the project site is dark sky compliant, of low intensity, low glare design, minimum height, and shall be hooded to direct light downward onto the subject lot and prevent spill-over onto adjacent lots. Exterior light fixtures shall be approved by the Planning Department Staff and Branding and Design Committee (if existing).

C-5. **Utility Services.** All new and existing utility services shall be placed underground and completed prior to any paving required for the project. No new utility poles shall be installed.

C-6. **Departmental Conditions.** Project must comply with the following departmental condition letters (attached):

1. Public Works letter dated October 1, 2020
2. SBC Fire Department dated November 2, 2020

C-7. **Agreement to Comply.** The owner and the carrier operating the facility shall sign and record an agreement to comply with the project description and all conditions of approval on a form acceptable to the Planning Department. Such form may be obtained from the Planning Department office prior to issuance of the Land Use Clearance. The owner/carrier shall provide evidence that he/she has recorded the Agreement to Comply with Conditions.

C-8. **Property Maintenance.** The Project and Property, including the landscaping, shall be maintained in a continuous state of good condition and repair, in full compliance with all approved plans, specifications and conditions of approval. Corrective improvements shall be undertaken as necessary to continuously

conform with and implement conditions of Project approval including, as applicable, repair, repainting and/or replacement of Project components as needed. Where a Project is found to be non-compliant, the Applicant shall adhere to City recommendations to bring the Project into compliance.

C-10. **Interpretations and Exceptions.** The Planning Director is authorized to render decisions as to the applicability or interpretation of the conditions set forth herein, including minor changes, when the strict application of the conditions conflicts with the underlying purpose of the conditions or creates undue hardship or administrative burden. Any administrative change granted shall be subject to such conditions as will: (i) assure that the adjustment thereby authorized shall appropriately implement purposes and objectives of the original conditions; and (ii) not change or compromise the effectiveness of the original conditions. As an example, and for illustrative purposes only, the Planning Director may modify the implementation timing of specific conditions at the mutual convenience of the City and Applicant. Minor changes authorized pursuant to this condition shall not require separate processing of a formal amendment.

C-11. **Indemnity.** Applicant agrees, at its sole cost and expense, to defend, indemnify, and hold harmless the City, its officers, employees, agents, and consultants, from any claim, action, or proceeding brought by a third-party against the City, its officers, agents, and employees, which seeks to attack, set aside, challenge, void, or annul all, or any part, of the approval, decision or action of the City Council, Planning Commission, or other decision-making body, or staff action concerning the Project.

C-12. **Legal Challenge.** In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the Applicant in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action.

C-13. **Expiration.** This Development Plan shall expire three (3) years after the date of final approval unless substantial physical construction has been completed on the development or unless a time extension has been applied for by the applicant in compliance with City rules and regulations.

D. <u>PRIOR TO ISSUANCE OF ANY LAND USE PERMIT, GRADING OR BUILDING PERMIT,</u> whichever is applicable, the applicant shall complete the following:

D-1. **APCD Permitting**. APCD permits must be obtained for all equipment that requires an APCD permit.

- APCD Authority to Construct permits are required for diesel engines rated

at 50 bhp and greater (e.g. firewater pumps and emergency standby generators) and boilers/large water heaters whose combined heat input rating exceeds 2.0 million BTUs per hour.

- Small boilers and water heating units (rated between 75,000 and 2.0 million Btu/hr) must comply with the emission limits and certification requirements of APCD Rule 360. Combinations of units totaling 2.0 million Btu/hr or greater are required to obtain a District permit prior to installation.

D-2. **Asphalt Paving**. Asphalt paving activities shall comply with APCD Rule 329, *Cutback and Emulsified Asphalt Paving Materials*. This condition shall be noted on public improvement plans and grading plan.

D-3. **Construction Wash-Out Area.** The Owner/Applicant shall designate a washout area(s) for the washing of concrete, stucco, paint, equipment, tools, etc., to prevent wash water from discharging to the storm drains, streets, drainages, or creeks. Polluted water and materials from the washout area(s) shall be contained within this area and removed from the site at least once a week or more often as needed to prevent spillage. The area shall be located at least 100 feet from any storm drain to the extent feasible. The construction wash-out area shall be depicted on project plans submitted for land use clearances and grading permits.

D-4. **Construction Management and Staging Plan.** Construction equipment staging and storage areas shall not be located beyond the boundaries of the property. The staging and storage areas for construction vehicles shall be depicted on project plans submitted for land use clearances and grading permits. A Construction Management Plan shall be provided to the City Planning Department prior to issuance of the Land Use permit.

D-5. **Fire Protection Certificate**. The Owner/Applicant shall obtain a Fire Protection Certificate. In coordinate with Fire Department and Public Works, the entrance to Nykobing will be red striped so no parking will be allowed in the areas of the landscape mediums.

D-6. **Grading and Public Infrastructure Plans**. The Owner/Applicant shall prepare, submit and obtain Public Works Department approval of all grading, street, drainage/storm water, water, sewer, and public improvement plans prior to issuance of Grading and Public Works Permits.

D-7 Grading & Drainage Improvements. The Owner/Applicant shall provide grading plan, stormwater/storm drain improvements, and calculations as described below.

a. Grade the site to allow the majority of excess runoff to flow to the City's Nykobing right-of-way.
b. Under sidewalk drains that daylight to the face of curb shall be case-in-

place with a slip resistant checkered plate per APWA Standards. Under sidewalk drain pipes are not permitted.

c. The proposed project shall not concentrate water where it was not concentrated before, without making proper provision for its disposal without damage to the downstream property owners. Provide calculations to verify that back lot drainage runoff is reasonable and doesn't exceed pre-construction development.

d. The project must comply with all Central Coast Regional Water Quality Control Board Post-Construction Storm Water Management Requirements. Features such as permeable pavers and bio-retention areas shall be incorporated into the project design. As a Regulated Project it is responsible for meeting all Runoff Retention Performance Requirements as set forth in Resolution No. R3-2013-0032. The project shall follow Project Clean Water's Stormwater Technical Guide for Low Impact Development to meet these requirements. Utilizing the City's standard stormwater maintenance agreement, the Owner/applicant shall develop an Operation & Maintenance (O&M) Plan and Maintenance Agreement for all structural Stormwater Control Measures (SCM), accepting all O&M responsibilities, and granting site access to the City for O&M inspections. All LID measures must be shown on the site plan and landscape plan. Owner/applicant shall enter into an Operation & Maintenance (O&M) Plan and Maintenance Agreement with the City of Solvang and have the Agreement recorded.

e. Provide roof structure over trash enclosure to prevent rain water entering trash enclosure area and producing polluted runoff.

D-8. **Agreement for Land Development Improvements**. An Agreement for Land Development Improvements, prepared by the City Engineer, shall be submitted to the City Council for execution prior to issuance of grading and/or public works permits. Said agreement shall guarantee the implementation of the required improvements.

D-9 The applicant shall hold a pre-construction conference. The conference shall include representatives from the Public Works Department, Building Department, Planning Department, the applicant, and contractor(s). The following shall be finalized and specified prior to the start of construction:

a. Hours of construction shall be limited to 7:30 am to 5:00 pm weekdays. No construction shall be allowed on Saturday, Sunday or State holidays except as approved in writing by the Public Works Director, or his designee.

b. Construction related truck-trips are to be scheduled during non-peak hours to help reduce truck traffic on adjacent streets and roadways.

c. The route of construction related traffic is to be established to minimize trips through surrounding residential neighborhoods.

d. Regular water sprinkling shall occur during site grading and the transportation of fill materials.

e. Trucks are covered when hauling grading material.

f. Maintain and clean public streets and sidewalks during grading and construction.

g. The street, whether public or private, shall not be used for storage of equipment or materials.

E. PRIOR TO ISSUANCE OF THE CERTIFICATE OF OCCUPANCY for the proposed Development Plan, the following shall be completed by the owner of the Real Property:

E-1. **Final Repairs**. Repair any damaged public or private improvement (curbs, gutters, sidewalks, landscape medians, water valves, fire hydrants, manholes, etc) subject to the review and approval of the City Engineer.

E-2. **Construction Debris.** The developer shall clear the project site of all excess construction debris. This requirement shall be noted on final building plans. Debris clearance shall occur prior to occupancy clearance.

E-3. **Street Signs**. All required street identification signs shall be installed.

E-4. **Landscape Installation**. Landscaping shall be installed by the applicant and inspected by the City prior to final Occupancy Clearance.

E-5. **Construction Material Recycling**. All excess construction materials (concrete, wood, etc.) shall be transported to the Foxen Canyon Landfill for separation, reuse/recycling or proper disposal. The Building Inspector will require copies of all dump receipts prior to Final Inspection.

The City of SOLVANG Danish Capital of America

Public Works Department

1644 Oak Street, PO Box 107, Solvang, CA 93464
(805) 688-5575
Fax (805) 686-2049

•MEMORANDUM•

To: Brynda Messer

From: Bridget Elliott, Public Works

CC: Matt van der Linen

Date: 10/1/2020

Re: 1420 Mission Drive - Conditions of Approval_Draft

STREETS

- Driveway designs must include a level 4-foot wide path of travel across the driveway for pedestrians, in conformance with CalDAG requirements and APWA standards. Provide sufficient elevations on the plans for all parking areas, driveways, private property and proper ADA slopes and cross slopes.

- Any alternations to the median along Nykobing will need to be approved by Public Works. Reconstruction of the landscape island will need to be reviewed by the Nyborg Estates H.O.A. The contact we have on file for the H.O.A. is Monica Little her email is monica@financialtelesis.com.

* Monica is ~~NOT~~ not the contact for Nyborg -

SEWER

- In any structure in which the sewer waste outlets and/or drains are lower than the top elevation of the nearest downstream sewer manhole in the street, a backflow prevention device, such as a check valve, shall be installed on the building sewer. In addition if any upstairs sewer laterals are connected to any downstairs laterals a backflow prevention device (check valve) must be added to the horizontal branch serving the lowest floor elevation, to prevent sewage backflow.

- The connection of the house/building sewer into the public sewer shall be made at the lateral by placing a cleanout at the property line.

- Applicant will be charged a wastewater/sewer impact fee in order to pay for the capital costs of public facilities reasonably related to the needs of new development in the city.

cost?

WATER

- A single master meter will be installed of the size shown to be reasonable based on water demand calculations provided by the applicant. The calculations must include maximum instantaneous demand in gallons per minute (GPM) and annual demand in acre feet per year (AFY). Sub-meters are required downstream from the City's utility meter. A backflow prevention device must be installed as near the meter box and public right-of-way as possible and shall be open to test and inspection by the city.

- A separate connection to the City's main is required for water service and facilities for building sprinkler systems, hydrants, hose reels and other facilities installed on private property for fire protection. An appropriate backflow prevention devices must be installed on the fire service line.

- Plans for installation of backflow prevention devices must be approved by the city cross connection inspector prior to installation.

- Testing, repair or maintenance of backflow prevention assemblies may be performed by certified backflow prevention assembly testers. The owners of any premises on which, or on account of which, backflow prevention assemblies are installed, shall have the backflow prevention assemblies tested by a certified backflow prevention assembly tester who has demonstrated their competency in testing of these backflow prevention assemblies to the city. Backflow prevention assemblies must be tested at least annually and immediately after installation, relocation or repair.

GRADING/DRAINAGE

- This project is subject to the California regional water quality control board, central coast region, resolution R3-2013-0032, post-construction stormwater management requirements (PCRs) for developmental projects in the central coast region. Refer to the "Stormwater Technical Guide" as set forth by the County of Santa Barbara for guidance in complying with the post-construction stormwater management requirements for developmental projects in the central coast region.

- Runoff flow volumes leaving the site, in excess of the PCR tier requirements, must be shown to not negatively impact the City's MS4 system. In other words, the post-construction peak flows must not exceed the pre-development peak flows. If the developer wishes to discharge more than the pre-development flow a drainage/flood study must be provided to Public Works that shows the increase in offsite runoff will not negatively impact the downstream drainage system or adjacent property owners.

- The owner shall not concentrate water where it was not concentrated before, without making proper provision for its disposal without damage to the downstream MS4 system and property owners. Provide calculations to the Public Works department to verify that lot drainage runoff is reasonable and doesn't exceed pre-construction development.

- The site should be graded to allow excess runoff to flow to the City's right-of-way. Show the 100 year flood path on the Grading Plan. The City discourages under sidewalk cross drains and would prefer runoff that exceeds the infiltration chamber capacity to drain to the street via the drive approach.

- Show all trees to remain in-place on the grading plan.

- All new trash enclosures are required to have a roof structure to cover the enclosure, to accommodate the stringent NPDES and LID standards of the City's Municipal Separate Storm Sewer System permit (MS4 permit).

Memorandum

DATE: November 2, 2020

TO: Laurie Tamura
Planning / Community Development Department
City of Solvang

FROM: Steven Sauer, Inspector SS
Fire Department

SUBJECT: APN: 137-590-010 Permit: DPA 180114
Site: 1420 Mission Drive, Solvang
Project: Development Plan Amendment – New Two-Story Commercial Vacation Rental Building

---

The above project is located within the jurisdiction of the Santa Barbara County Fire Department.

The Fire Prevention Division must be notified of any changes to the project proposal. A change in the project description may cause conditions to be imposed.

GENERAL NOTICE FOR DEVELOPMENT PLAN AMENDMENT

1. Center island on Nykobing shall be redesigned and reduced for fire apparatus access.
   - The length of Nykobing fronting the property shall be classified as a fire lane.
2. Based off project design, property shall be addressed off Nykobing.
   - Recorded address required prior to building permit issuance.

THE FOLLOWING ARE CONDITIONS FOR DEVELOPMENT PLAN AMENDMENT

CONDITIONS PRIOR TO LAND USE CLEARANCE

3. The following plans shall be submitted to and approved by the Fire Department:
   - Site Utility Plan
   - Vegetation Plan
   - Access Plan
   - Signage Plan

GENERAL CONDITIONS

4. Defensible space of 100 feet (or to the property line, whichever is nearer) around the proposed structures and any existing structures on this property shall be provided.

- Removal does not apply to single specimens of trees, ornamental shrubbery or similar plants that are used as ground cover if they do not form a means of rapidly transmitting fire from the native growth to any structure.

5. Fire department apparatus access shall be provided and maintained for the life of the project.
   - Prior to vertical construction, access shall be installed per approved access plans.
   - All driveways shall have a minimum width of 26 feet.
   - Access shall comply with appendix D of the California Fire Code (CFC).
     - **D102.1** Access shall support the imposed load of fire apparatus weighing up to 75,000 pounds.
     - **D105.1** Any structure that exceeds thirty (30) feet in height shall meet the California Fire Code Appendix D105 requirements.
   - Surface shall be paved.
   - Access ways shall be unobstructed and extended to within 150 feet of all portions of the exterior walls of the first story of any building.
   - A minimum of 13 feet, 6 inches of vertical clearance shall be provided and maintained for the life of the project for emergency apparatus access.

6. Exterior fire department walkway access shall be provided and maintained for the life of the project.
   - Minimum five (5) foot path, clear of obstructions shall be provided around all structures.
   - Emergency escape and rescue ground ladder access points shall be clear of obstructions.

7. Fire department roof access shall be provided and maintained for the life of the project.

8. Designated fire lanes shall include red curbs and signs indicating "Fire Lane – No Stopping" placed as required by the fire department. Refer to current adopted California Fire Code.

9. An automatic fire sprinkler system shall be installed.
   - The fire department shall determine the location of any fire department connection (FDC) that may be required.

10. A full building automatic fire or emergency alarm system shall be installed.
    - Fire alarm system shall meet Santa Barbara County Fire Department requirements.

11. Portable fire extinguishers are required and shall be in accordance with the current adopted Santa Barbara County Code Chapter 15.

12. An approved fire safety and evacuation plan shall be provided, maintained and in compliance with CFC 403.10.1.

13. All fire protection systems shall be maintained for the life of the project.

14. Suite number plan shall be provided and require fire department approval.

15. Address numbers shall be properly posted for all buildings and suites.

- Minimum height of twelve (12) inches for buildings and four (4) inches for each suite.
- Address number locations shall be approved by the fire department.
- Address numbers shall be a color contrasting to the background color.
- The address numbers shall be elevated for clear visibility and easy directional identification.
- If the driveway is over 150 feet in length or the building is obstructed from view at the access road and/or driveway, numbers shall be posted at all road and driveway intersections as is necessary.

16. Access way entrance gates shall conform to fire department requirements.

17. A Knox Box entry systems shall be installed. Spare keys shall be provided for the Knox Box entry system.

18. When access ways are gated, a fire department approved Knox locking system shall be installed.

19. The applicant will be required to pay Fire Department Development Impact Mitigation Fees. In accordance with Chapter 15 of the Santa Barbara County Code, the fee shall be computed per square foot of occupied space in each new building.

    - **Payment shall be made according to the schedule of fees in place on the date fees are paid. As of the date of this letter, fees currently are as follows:**

Nonresidential-Retail/Commercial	$0.77 per square foot

Final occupancy clearance inspection will not be scheduled unless fees have been paid.

ADVISORY FOR CONSTRUCTION

20. All standard fire department conditions and current codes shall apply at time of development.

21. Portable fire extinguishers are required on the project site at all times during construction.

22. Temporary address posting is required during construction. Inspections will not be completed without temporary address posted.
    - Temporary addressing shall be plainly visible and legible from the street or road fronting the property. Address numbers shall clearly contrast with their background and shall be a minimum of 6 inches high with 1/2 inch stroke.

27. Construction access shall comply with California Fire Code (CFC) requirements during construction.
    - Vehicles and materials shall not obstruct fire access.
    - Temporary onsite parking areas or offsite parking areas may need to be provided.

As always, if you have any questions or require further information, please call me at 805-686-8182 or 805-681-5523.

SS:ss

1420 Mission Drive LLC

8/9/2023

Lisa Scherman

Assistant Planner

City of Solvang

Subject: Request for Extension of Time for Development Plans Due to COVID-19 Delays and banking sector fluctuations.

To Whom It May Concern,

I am writing on behalf of 1420 Mission Drive LLC, regarding our ongoing development project at located at 1420 Mission Drive. As you are aware, the initial deadline for the submission of our development plans was set for November 2023. However, we are reaching out to kindly request an extension due to unforeseen and substantial delays caused by the COVID-19 pandemic and the ongoing fluctuations within the banking sector.

Due to the substantial pause during the covid-19 pandemic, we kindly ask for an extension of another three years, setting the new deadline for November 2026. This additional time will allow us to adapt to the challenges presented by the pandemic and banking sector, ensuring our development meets the high standards expected by the city and our community.

We understand the importance of timely project completion and want to assure the city and its residents of our dedication to this project. The delays we are experiencing are unprecedented and largely out of our control, but with the proposed extension, we are confident in delivering a project that aligns with our shared vision and goals.

We deeply appreciate your understanding and patience in these challenging times.

Thank you for considering our request. We look forward to your favorable response.

Respectfully,

1420 Mission Drive LLC

Jake Rodriguez

Manager

RECEIVED
AUG 09 2023
By

RESOLUTION NO. 25-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SOLVANG CALIFORNIA APPROVING A ONE (1) YEAR TIME EXTENSION LOCATED AT 1420 MISSION DRIVE (APN 137-590-010) FOR A DEVELOPMENT PLAN AND PREVIOUSLY ADOPTED CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION

WHEREAS, the Planning Commission for the City of Solvang has received for its review and consideration a staff report requesting a one-year time extension for Development Plan located at 1420 Mission Drive (APN 137-590-010) in the Tourist Related Commercial (TRC) Zone; and

WHEREAS, the Planning Commission of the City of Solvang approved Resolution 20-05 at a regular public hearing on November 2, 2020; and

WHEREAS, the Planning Commission of the City of Solvang approved Resolution 23-08 at a regular public hearing on November 6, 2023 granting a one (1) year time extension; and

WHEREAS, the applicant filed a time extension on November 4, 2024; and

WHEREAS, the notice of public hearing was sent to adjoining property owners and advertised in the manner required by law; and

WHEREAS, the Planning Commission of the City of Solvang has reviewed and considered the request for a Time Extension for the previously approved Development Plan at its regular Planning Commission meeting on February 3, 2025.

NOW THEREFORE, THE PLANNING COMMISSION OF THE CITY OF SOLVANG DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the Planning Commission of the City of Solvang previously adopted an exemption under Section 15332 In-Fill Development Projects of the California Environmental Quality Act (CEQA).

SECTION 2. The Planning Commission of the City of Solvang hereby makes the follow findings for a time extension:

1. The Planning Commission finds that the applicant has good cause (e.g., demonstrated problems with completing the acquisition of the lot, poor weather during periods of planned construction, financial circumstances, etc.) for granting a time extension.

   Fact. The applicant has provided a letter explaining that their development plans have been delayed due lack of capital. The project team wishes to ensure sufficient capital to complete the proposed project as entitled.

SECTION 3. That the Recitals set forth above are true and correct and are adopted as findings I support of this Resolution.

SECTION 4. That the Planning Commission of the City of Solvang approves the Time Extension for the project, subject to the conditions of approval attached as Exhibit A.

SECTION 5. That this Resolution is effective immediately upon adoption.

SECTION 6. That the City Clerk shall certify to the passage and adoption of this Resolution and shall cause a certified copy to be filed in the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 3rd day of February, 2025.

_____
Chair

APPROVED AS TO FORM:

_____
Taylor Ford, Assistant City Attorney

ATTEST:

_____
Annamarie Porter, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA)ss
CITY OF SOLVANG)

I, Annamarie Porter, City Clerk of the City of Solvang, California do hereby certify that Resolution No. 25-01 was _____ and _____ by the Planning Commission of the City of Solvang at a regular meeting of said Planning Commission held on the 3rd day of February, 2025, and thereafter signed and approved by the Chair and attested by the City Clerk, and that said resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Annamarie Porter, City Clerk

Exhibit A
Conditions of Approval
City of Solvang

Planning Application 24-028
Applicant: 1420 Mission Drive LLC
APN 137-590-010

The following conditions of approval apply to the project site referenced above. These conditions of approval are grouped by department and include the timing of required compliance. Additional language within a condition may further define the timing of the required compliance.

PLANNING DEPARTMENT:

Condition #		***Action***
PLN-1	This one-year time extension for 1420 Mission Drive (APN 137-590-010) shall expire on November 6, 2025 unless building permits are issued and construction has commenced, or a time extension application has been submitted on or before that date.	Extension application or construction commenced
PLN-2	All conditions contained in PC Resolution 20-05, Exhibit A and Departmental conditions letters shall remain in full force and be applicable to all required submittals.	N/A

End Conditions

PLANNING COMMISSION STAFF REPORT

AGENDA ITEM 7.a

Meeting Date: February 3, 2025

SUBJECT: **Oral Presentation of Brown Act Requirements**

PREPARED BY: A. Rafael Castillo, AICP, Planning and Building Manager
David M. Fleishman, City Legal Counsel

DISCUSSION:
The City Attorney will provide the Planning Commission of the City of Solvang an oral presentation regarding the brown act.

ALTERNATIVES:
None.

FISCAL IMPACT:
None.

ATTACHMENTS:
A. Guide to Ralph M. Brown Act
B. Guide to Public Records
C. Rosenberg's Rules of Order

Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024

LEAGUE OF CALIFORNIA CITIES

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

ACKNOWLEDGMENTS

Cal Cities thanks the following individuals for their work on this publication:

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Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024

CHAPTER 1: IT IS THE PEOPLE'S BUSINESS.....5

CHAPTER 2: LEGISLATIVE BODIES.....11

CHAPTER 3: MEETINGS.....17

CHAPTER 4: AGENDAS, NOTICES, AND PUBLIC PARTICIPATION.....29

CHAPTER 5: CLOSED SESSIONS.....41

CHAPTER 6: REMEDIES.....55

TABLE OF CONTENTS

CHAPTER 1: IT IS THE PEOPLE'S BUSINESS 5

The right of access 6
Broad coverage 6
Narrow exemptions 7
Public participation in meetings 7
Controversy 8
Beyond the law — good business practices 8
Achieving balance 9
Historical note 9

CHAPTER 2: LEGISLATIVE BODIES 11

What is a "legislative body" of a local agency? 12
What is not a "legislative body" for purposes of the Brown Act? 14

CHAPTER 3: MEETINGS 17

Brown Act meetings 18
Six exceptions to the meeting definition 18
Collective briefings 21
Retreats, trainings, and workshops of legislative bodies 21
Serial meetings 22
Informal gatherings 24
Technological conferencing 25
Location of meetings 26

CHAPTER 4: AGENDAS, NOTICES, AND PUBLIC PARTICIPATION 29

Agendas for regular meetings 30
Mailed agenda upon written request 31
Notice requirements for special meetings 32
Notices and agendas for adjourned and continued meetings and hearings 32
Notice requirements for emergency meetings 33
Notice of compensation for simultaneous or serial meetings 33
Educational agency meetings 33
Notice requirements for tax or assessment meetings and hearings 33

Non-agenda items 34
Responding to the public 35
The right to attend and observe meetings 36
Records and recordings 37
The public's right to speak during a meeting 38

CHAPTER 5: CLOSED SESSIONS 41
Agendas and reports 42
Litigation 43
Real estate negotiations 45
Public employment 46
Labor negotiations 47
Labor negotiations — school and community college districts 48
Other Education Code exceptions 48
Joint powers authorities 48
License applicants with criminal records 49
Public security 49
Multijurisdictional law enforcement agency 49
Hospital peer review and trade secrets 49
Other legislative bases for closed session 50
Who may attend closed sessions 50
The confidentiality of closed session discussions 51

CHAPTER 6: REMEDIES 55
Invalidation of action taken 56
Declaratory relief to determine whether past action violated the act 57
Civil action to prevent future violations 57
Costs and attorney's fees 58
Misdemeanor penalties 58
Voluntary resolution 59

Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access 6

Broad coverage 6

Narrow exemptions 7

Public participation in meetings 7

Controversy 8

Beyond the law — good business practices 8

Achieving balance 9

Historical note 9

Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the act's initial section, declaring the Legislature's intent:

"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."[1]

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

> *"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*[2]

PRACTICE TIP: The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

The Brown Act's other unchanged provision is a single sentence:

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

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body discusses, deliberates, or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference or videoconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Social Media posts, comments, and "likes" can result in a Brown Act violation. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions, and some state legislatures have banned the practice. On the other hand, widespread video streaming and videoconferencing of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to ensure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multimember government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body. [5]

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

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and limits on the time allotted to each speaker. For more information, see chapter 4.

Controversy

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

Some public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately, such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and businesslike, but it may be perceived as unresponsive and untrustworthy.

PRACTICE TIP: Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling, for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.[6] Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.

- A local agency's right to confidentially address certain negotiations, personnel matters, claims, and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

A detailed and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law and look at its unique circumstances to determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

PRACTICE TIP: The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action are to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

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

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

Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series titled "Your Secret Government" that ran in May and June 1952.

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

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

Assembly Member Brown is best known for the open-meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **https://www.calcities.org/home/resources/open-government2**. A current version of the Brown Act may be found at **https://leginfor.legislature.ca.gov**.

ENDNOTES

1 Cal. Gov. Code, § 54950.

2 Cal. Const., Art. 1, § 3, subd. (b)(1).

3 Cal. Gov. Code, § 54953, subd. (a).

4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Const., Art. 1, § 3, subd. (b)(2).

5 Cal. Gov. Code, § 54952.2, subds. (b)(2) and (c)(1); Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533.

6 Cal. Gov. Code, § 54953.7.

Chapter 2

LEGISLATIVE BODIES

What is a "legislative body" of a local agency? 12

What is not a "legislative body" for purposes of the Brown Act? 14

Chapter 2

LEGISLATIVE BODIES

The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.[1]

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

A "legislative body" includes the following:

- The **"governing body** of a local agency" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards, and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision, or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]
- **Newly elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.[7] Thus, meetings between incumbents and newly elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

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

Q. On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation, but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions, and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]
- **Standing committees** of a legislative body, irrespective of their composition, which have either (1) a continuing subject matter jurisdiction or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates committees on budget and finance or on public safety that are not limited in duration or scope, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11] A majority of the members of a legislative body may attend an open and public meeting of a standing committee of that body, provided the members who are not part of the standing committee only observe.[12] For more information, see chapter 3.
- The governing body of any **private organization** either (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company, or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[13] These include some nonprofit corporations created by local agencies.[14] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[15] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[16]

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

Q. The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

A. *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q. If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A. *Yes. But if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[17]

What is <u>not</u> a "legislative body" for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[18] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[19]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[20]

Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

A. *No, because the committee has not been established by formal action of the legislative body.*

Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

A. *Possibly, because the direction from the city council might be regarded as a formal action of the body, notwithstanding that the city manager controls the committee.*

- Individual decision-makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads is not subject to the Brown Act since such assemblies are not those of a legislative body.[21]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[22]
- County central committees of political parties are also not Brown Act bodies.[23]

Legal counsel for a governing body is not a member of the governing body, therefore, the Brown Act does not apply to them. But counsel should take care not to facilitate Brown Act violations by members of the governing body.[24]

ENDNOTES

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127.

2 Cal. Gov. Code, § 54952, subds. (a) and (b).

3 Cal. Gov. Code, § 54951; Cal. Health & Saf. Code, § 34173, subd. (g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Cal. Ed. Code § 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550.

5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990).

6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362.

7 Cal. Gov. Code, § 54952.1.

8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805.

9 Cal. Gov. Code, § 54952, subd. (b)

10 79 Ops.Cal.Atty.Gen. 69 (1996).

11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793.

12 Cal. Gov. Code § 54952, subd. (c)(6).

13 Cal. Gov. Code, § 54952, subd. (c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996, who, after that date, is made a nonvoting board member by the legislative body. Cal. Gov. Code § 54952, subd. (c)(2).

14 Cal. Gov. Code, § 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002).

15 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300 fn. 5.

16 *"The Brown Act, Open Meetings for Local Legislative Bodies,"* California Attorney General's Office (2003), p. 7.

17 Cal. Gov. Code, § 54952, subd. (d).

18 Cal. Gov. Code, § 54952, subd. (b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

19 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129.

20 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973).

21 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879.

22 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513.

23 59 Ops.Cal.Atty.Gen. 162, 164 (1976).

24 *GFRCO, Inc. v. Superior Court of Riverside County* (2023) 89 Cal.App.5th 1295, 1323; *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95, 105 (a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting).

Chapter 3

MEETINGS

Brown Act meetings 18

Six exceptions to the meeting definition 18

Collective briefings 21

Retreats, trainings, and workshops of legislative bodies 21

Serial meetings 22

Informal gatherings 24

Technological conferencing 25

Location of meetings 26

Chapter 3

MEETINGS

The Brown Act only applies to meetings of local legislative bodies. It defines a meeting as "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 any action on any item that is within the subject matter jurisdiction of the legislative body."[1] The term *meeting* is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.[2]

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.[3]
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.[4]
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.[5]
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.[6]

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:[7]

Individual contacts

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

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

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

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

Community meetings

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

> **"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**
>
> *The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for reelection and all three participate. All of the candidates are asked their views on a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. *Yes, because the chamber of commerce, not the city, is organizing the debate. The city should not sponsor the event or assign city staff to help organize or run the event. Also, the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates. Finally, incumbents participating in the event should take care to limit their remarks to the program set by the chamber and safeguard due process by indicating they will keep an open mind regarding specific applications that might come before the council.*

Q. May the three incumbents accept an invitation from the editorial board of a local paper to all candidates to meet as a group and answer questions about and/or debate city issues?

A. *No, unlike the chamber of commerce event, this would not be allowed under the Brown Act because it is not an open and publicized meeting.*

Other legislative bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of (1) another body of the local agency and (2) a legislative body of another local agency.[8] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony, trying to influence the outcome of proceedings before a subordinate body, or discussing the merits with interested parties.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body that the public may attend.*

Q. The members then proceed upstairs to the office of their local assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the assembly member.*

Standing committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting, and they must sit where members of the public sit).[9]

Q. The legislative body establishes a standing committee of two of its five members that meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Q. Can the legislative body establish multiple standing committees with partially overlapping jurisdiction?

A. *Yes. One result of this overlap in jurisdiction may be that three or more of the members of the legislative body ultimately end up discussing an issue as part of a standing committee meeting. This is allowed under the Brown Act provided each standing committee meeting is publicly noticed and no more than two of the five members discuss the issue at any given standing committee meeting.*

Social or ceremonial events

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

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

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.[10] This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements. Staff may provide written briefings (e.g., staff updates, emails from the city manager, confidential memos from the city attorney) to the full legislative body, but apart from privileged memos, the written materials may be subject to disclosure as public records as discussed in chapter 4.

Retreats, trainings, and workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, trainings, or workshops are subject to the requirements of the Brown Act. This is the case whether the gathering focuses on long-range agency planning, discussion of critical local issues, satisfying state-mandated ethics training requirements, or team building and group dynamics.[11]

Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings include only a portion of a legislative body, but eventually they comprise a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting … 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."[12] The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

The serial meeting may occur by either a "daisy chain" or a "hub and spoke" sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D, and so on until a quorum has discussed, deliberated, or taken action on an item within the legislative body's subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, D, and so on (the spokes) until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one by one for discussion, deliberation, or a decision on a proposed action.[13] Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "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."[14]

The Brown Act is violated, however, if several one-on-one meetings or conferences lead to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum

of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[16] Such a memo, however, may be a public record.[17]

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

"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Bradley and Cohen lined up and another vote leaning. With you, I'd be over the top."

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

The lobbyist and the reporter are facilitating a violation of the Brown Act. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking, "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "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."[18] Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation, or action taken among the majority of the legislative body.

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

"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"

"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

Q. Various social media platforms and websites include forums where agency employees and officials can discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

A. *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*

Q. A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?

A. *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply all" option that may inadvertently result in a Brown Act violation. Staff should consider using the "bcc" (blind carbon copy) option when addressing an email to multiple members of the legislative body and remind recipients not to "reply all."

Social media should also be used with care. A member of the legislative body cannot respond directly to any communication on an internet-based social media platform that is made, posted, or shared by any other member of the legislative body. This applies to matters within the subject matter jurisdiction of the legislative body. For example, if one member of a legislative body "likes" a social media post of one other member of the same body, that could violate the Brown Act, depending on the nature of the post.[19]

Finally, electronic communications (such as text messaging) among members of a legislative body during a public meeting should be discouraged. If such communications are sent to a majority of members of the body, either directly or through an intermediary, on a matter on the meeting agenda, that could violate the Brown Act. Electronic communications sent to less than a majority of members of the body during a quasi-judicial proceeding could potentially raise due process concerns, even if not per se prohibited by the Brown Act. Additionally, some legislative bodies have rules governing electronic communications during meetings of the legislative body and how their members should proceed if they receive a communication on an agenda item that is not part of the record or not part of an agenda packet.

Informal gatherings

Members of legislative bodies are often tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[20] A gathering at which a quorum of the legislative body discusses matters within their jurisdiction violates the Brown Act even if that gathering occurs in a public place. The Brown Act is not satisfied by public visibility alone. It also requires public notice and an opportunity to attend, hear, and participate.

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

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence does not lessen the potential for a violation of the Brown Act.

Technological conferencing

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

Except for certain non-substantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But in an effort to keep up with modern technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[21] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

Teleconference is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."[22] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[23]

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction.
- Additional teleconference locations may be made available for the public.
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable.
- Agendas must be posted at each teleconference location, even if a hotel room or a residence.
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C., to New York. May she?

A. *She may not participate or vote because she is not in an open, noticed, and posted teleconference location.*

Until Jan. 1, 2026, teleconferencing may also be used on a limited basis where a member indicates their need to participate remotely for "just cause" (e.g., childcare or a contagious illness) or due to "emergency circumstances" (e.g., a physical or family medical emergency). This teleconferencing option has extremely detailed requirements, and careful review is needed. If the City experiences a technical issue that prevents members of the public from viewing the meeting and/or offering comments virtually, then no further action can be taken until the technical issue is resolved.[24]

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

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[25]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[26]

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party.
- Inspect real or personal property that cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property.

Q. The agency is considering approving a major retail mall. The developer has built other similar malls and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice.
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction.

- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- Visit the office of its legal counsel for a closed session on pending litigation when to do so would reduce legal fees or costs.[27]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[28] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[29]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[30] State law has also allowed for virtual meetings under certain emergency situations.[31]

ENDNOTES

1 Cal. Gov. Code, § 54952.2, subd. (a).

2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870.

3 Cal. Gov. Code, § 54954, subd. (a).

4 Cal. Gov. Code, § 54956.

5 Cal. Gov. Code, § 54956.5.

6 Cal. Gov. Code, § 54955.

7 Cal. Gov. Code, § 54952.2, subd. (c).

8 Cal. Gov. Code, § 54952.2, subd. (c)(4).

9 Cal. Gov. Code, § 54952.2, subd. (c)(6). See 81 Ops.Cal.Atty.Gen. 156 (1998).

10 Cal. Gov. Code, § 54953.1.

11 "*The Brown Act,*" California Attorney General (2003), p. 10.

12 Cal. Gov. Code, § 54952.2, subd. (b)(1).

13 *Stockton Newspapers, Inc. v. Redevelopment Agency* of the City of Stockton (1985) 171 Cal.App.3d 95.

14 Cal. Gov. Code, § 54952.2, subd. (b)(2).

15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518.

16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

17 Cal. Gov. Code, § 54957.5, subd. (a).

18 Cal. Gov. Code, § 54952.2, subd. (b)(2).

19 Cal. Gov. Code, § 54952.2, subd. (b)(3).

20 Cal. Gov. Code, § 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964).

21 Cal. Gov. Code, § 54953, subd. (b)(1).

22 Cal. Gov. Code, § 54953, subd. (b)(4).

23 Cal. Gov. Code, § 54953. Until Jan. 1, 2024, the legislative body could use teleconferencing "during a proclaimed state of emergency" by the Governor in specified circumstances, and teleconference locations were exempt from certain requirements, such as identification in and posting of the agenda.

24 Cal Gov. Code, § 54953, subd. (f) (which will become Govt. §54953(e) as of Jan. 1, 2024).

25 Cal. Gov. Code, § 54954, subd. (b).

26 Cal. Gov. Code, § 54954, subd. (b)(1)-(7).

27 94 Ops.Cal.Atty.Gen. 15 (2011).

28 Cal. Gov. Code, § 54954, subd. (c).

29 Cal. Gov. Code, § 54954, subd. (d).

30 Cal. Gov. Code, § 54954, subd. (e).

31 Cal. Gov. Code, § 54953, subd. (e) (exp. January 1, 2026).

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Agendas for regular meetings 30

Mailed agenda upon written request 31

Notice requirements for special meetings 32

Notices and agendas for adjourned and continued meetings and hearings 32

Notice requirements for emergency meetings 33

Notice of compensation for simultaneous or serial meetings 33

Educational agency meetings 33

Notice requirements for tax or assessment meetings and hearings 33

Non-agenda items 34

Responding to the public 35

The right to attend and observe meetings 36

Records and recordings 37

The public's right to speak during a meeting 38

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location "freely accessible to members of the public."[1] The courts have not definitively interpreted the "freely accessible" requirement. The California Attorney General has interpreted this provision to require posting in a location open and accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.[2] This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.[3] While posting an agenda on an agency's internet website will not, by itself, satisfy the "freely accessible" requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if (1) the local agency has a website and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body or (b) has members that are compensated, with one or more members that are also members of a governing body.[4]

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city's website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for "substantial compliance" with all agenda posting requirements, including posting to the agency website.[5] Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties that cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.[6] This inquiry requires a fact-specific examination of whether the agency or its legislative body made "reasonably effective efforts to notify interested persons of a public meeting" through online posting and other available means.[7] The Attorney General's opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.[8] For these reasons, obvious website technical difficulties might not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."[9] For a discussion of descriptions for open and closed-session agenda items, see chapter 5. Special care should be made to describe on the agenda each distinct action to be taken by the legislative body, while an overbroad description of a "project" must be avoided if the "project" is actually a set of distinct actions, in which case each action must be listed separately on the agenda.[10] For example, the listing of an "initiative measure" alone on an agenda was found insufficient where the agency was also deciding whether to accept a gift from the measure proponent to pay for the election.[11]

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

Q. The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street.
- Consideration of a contract with ABC Consulting.

Are these descriptions adequate?

A. *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read, "Consideration of a contract with ABC Consulting in the amount of $50,000 for traffic engineering services regarding traffic on Eighth Street."*

Q. The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which is listed on the agenda.

Is this permissible?

A. *Yes, as long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed-session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions.[12] Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted or upon distribution to all, or a majority of all, of the members of the legislative body, whichever occurs first. If the local agency has an internet website, this requirement can be satisfied by emailing a copy of, or website link to, the agenda or agenda packet if the person making the request asks for it to be emailed. Further, if requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[13]

Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation and each radio and television station that has requested such notice in writing. This notice must be delivered at least 24 hours before the time of the meeting by personal delivery or any other means that ensures receipt.

The notice must state the time and place of the meeting as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda, that is, with a brief general description. Some items must appear on a regular, not special, meeting agenda (e.g., general law city adoption of an ordinance or consideration of local agency executive compensation).[14]

As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: at a site that is freely accessible to the public, and on the agency's website if (1) the local agency has a website and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body or (b) has members that are compensated, with one or more members that are also members of a governing body.[15]

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[16] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[17] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[18]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[19] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[20]

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[21] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[22] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and can address the board on those items.[23]

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[24] Although written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments, as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a

mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[25] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[26]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings).
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action, and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline.
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

PRACTICE TIP: Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

> **"I'd like a two-thirds vote of the board so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.**
>
> **"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"**

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

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

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

- First, make two determinations: (1) that there is an immediate need to take action
  and (2) that the need arose after the posting of the agenda. The matter is then
  placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

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

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on their own activities.[27] However, caution should be used to avoid any discussion or action on such items.

> **Council Member Jefferson: I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street. Are there problems with this project?**
>
> **City Manager Frank: The public works director has prepared a 45-minute PowerPoint presentation for you on the status of this project and will give it right now.**
>
> **Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.**

It is clear from this dialogue that the Elm Street project was not on the council's agenda but was raised during the public comment period for items not on the agenda. Council Member Jefferson properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

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

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[28]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[29] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[30]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[31]

Action by secret ballot, whether preliminary or final, is flatly prohibited.[32]

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[33]

Q. The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A. *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt or disrupt proceedings.[34] Ejection is justified only when audience members actually disrupt the proceedings,[35] or, alternatively, if the presiding member of the legislative body warns a person that their behavior is disruptive and that continued disruption may result in their removal (but no prior warning is required if there is a use of force or true threat of force).[36] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to readmit an individual or individuals not responsible for the disturbance.[37]

Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[38] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[39]

Q. In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A. *No. The memorandum is a privileged attorney-client communication.*

Q. In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A. *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A nonexempt or otherwise non-privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose, and the agendas for all meetings of the legislative body must include the address of this office or location.[40] The location designated for public inspection must be open to the public, not a locked or closed office. Alternatively, the documents can be posted on the city's website for public review if statutory requirements are met.[41]

A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body.
- After the meeting if prepared by some other person.[42]

This requirement does not prevent assessing a fee or deposit for providing a copy of a public record pursuant to the California Public Records Act except where required to accommodate persons with disabilities.[43]

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[44] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[45]

In addition, the public is specifically allowed to use audio or videotape recorders or still or motion picture cameras at a meeting to record meetings of legislative bodies, absent a reasonable finding by the body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[46]

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[47]

PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record but must respect a speaker's desire for anonymity.

The public's right to speak during a meeting

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, as long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[48]

Q. Must the legislative body allow members of the public to show videos or make a PowerPoint presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

A. *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the Brown Act, as well as case law, prevents legislative bodies from prohibiting public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself.[49] However, this prohibition does not provide immunity for defamatory statements.[50]

Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

A. *No, as long as the criticism pertains to job performance.*

Q. During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

A. *There is no case law on this subject. Some would argue that purely campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section where relevant to the governing of the agency and an implicit criticism of the incumbents' performance of city business.*

The legislative body may adopt reasonable regulations, including a limit on the total time permitted for public comment and a limit on the time permitted per speaker.[51] Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[52]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a regular (but not special) public meeting if all interested members of the public had the opportunity to

speak on the item before or during its consideration, and if the item has not been substantially changed.[53]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[54]

ENDNOTES

1 Cal. Gov. Code, § 54954.2, subd. (a)(1).

2 78 Ops.Cal.Atty.Gen. 327 (1995).

3 88 Ops.Cal.Atty.Gen. 218 (2005).

4 Cal. Gov. Code, §§ 54954.2, subd. (a)(1) and 54954.2, subd. (d).

5 Cal. Gov. Code, § 54960.1, subd. (d)(1).

6 99 Ops.Cal.Atty.Gen. 11 (2016).

7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432.

8 99 Ops.Cal.Atty.Gen. 11 (2016).

9 Cal. Gov. Code, § 54954.2, subd. (a)(1).

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of California Environmental Quality Act [CEQA] action [mitigated negative declaration] without specifically listing it on the agenda violates the Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis). See also *GI Industries v. City of Thousand Oaks* (2022) 84 Cal.App.5th 814 (depublished) (Brown Act requires CEQA finding of exemption to be listed on agenda items that are projects under CEQA).

11 *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194.

12 Cal. Gov. Code, § 54954.5.

13 Cal. Gov. Code, § 54954.1.

14 Cal. Gov. Code, §§ 36934; 54956, subd. (b).

15 Cal. Gov. Code, § 54956, subds. (a) and (c).

16 Cal. Gov. Code, § 54955.

17 Cal. Gov. Code, § 54954.2, subd. (b)(3).

18 Cal. Gov. Code, § 54955.1.

19 Cal. Gov. Code, § 54956.5.

20 Cal. Gov. Code, § 54952.3.

21 Cal. Edu. Code, §§ 35144, 35145, and 72129.

22 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196.

23 Cal. Edu. Code, § 35145.5

24 Cal. Edu. Code, § 54954.6

25 See Cal. Const. Art. XIIIC, XIIID; Cal. Gov. Code, § 54954.6, subd. (h).

26 Cal. Gov. Code, § 54954.2, subd. (b).

27 Cal. Gov. Code, § 54954.2, subd. (a)(2); *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239 (six-minute colloquy on non-agenda item with staff answering questions and advising that matter could be placed on future agenda fell within exceptions to discussing or acting upon non-agenda items).

28 Cal. Gov. Code, § 54953.3.

29 Cal. Gov. Code, § 54961, subd. (a); Cal. Gov. Code, § 11135, subd. (a).

30 Cal. Gov. Code, § 54952.2, subd. (c)(2).

31 Cal. Gov. Code, § 54953, subd. (b).

32 Cal. Gov. Code, § 54953, subd. (c).

33 Cal. Gov. Code, § 54953, subd. (c)(2).

34 Cal. Gov. Code, §§ 54957.9, 54957.95.

35 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed toward mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption); but see *Kirkland v. Luken* (S.D. Ohio 2008) 536 F.Supp.2d 857 (finding no First Amendment violation by mayor for turning off microphone and removing speaker who used foul and inflammatory language that was deemed as "likely to incite the members of the audience during the meeting, cause disorder, and disrupt the meeting").

36 Cal. Gov. Code, § 54957.95.

37 Cal. Gov. Code, § 54957.9.

38 Cal. Gov. Code, § 54957.5.

39 Cal. Gov. Code, § 54957.5, subd. (d).

40 Cal. Gov. Code, § 54957.5(b); see also *Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.

41 Cal. Gov. Code § 54957.5.

42 Cal. Gov. Code, § 54957.5, subd. (c).

43 Cal. Gov. Code, § 54957.5, subd. (d).

44 Cal. Gov. Code, § 54953.5, subd. (b).

45 Cal. Gov. Code, § 54957.5, subd. (d).

46 Cal. Gov. Code, § 54953.5, subd. (a).

47 Cal. Gov. Code, § 54953.6.

48 Cal. Gov. Code, § 54954.3, subd. (a).

49 Cal. Gov. Code, § 54954.3, subd. (c); Acosta v. City of Costa Mesa (9th Cir. 2013) 718 F.3d 800.

50 Cal. Gov. Code, § 54954.3, subd. (c).

51 *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150 (public comment time limit of three minutes for each speaker did not violate First Amendment).

52 Cal. Gov. Code, § 54954.3. subd. (b); *Chaffee v. San Francisco Public Library Commission* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992).

53 Cal. Gov. Code, § 54954.3, subd. (a); *Preven v. City of Los Angeles* (2019) 32 Cal.App.5th 925.

54 Cal. Gov. Code, § 54954.3, subd. (a).

Chapter 5

CLOSED SESSIONS

Agendas and reports 42

Litigation 43

Real estate negotiations 45

Public employment 46

Labor negotiations 47

Labor negotiations — school and community college districts 48

Other Education Code exceptions 48

Joint powers authorities 48

License applicants with criminal records 49

Public security 49

Multijurisdictional law enforcement agency 49

Hospital peer review and trade secrets 49

Other legislative bases for closed session 50

Who may attend closed sessions 50

The confidentiality of closed session discussions 51

Chapter 5

CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.[1]

As summarized in chapter 1 of this guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. However, there is no prohibition in putting overlapping exceptions on an agenda in order to provide an opportunity for more robust closed session discussions. As an example, a city council cannot give direction to the city manager about a property negotiation during a performance evaluation exception. However, if both real property negotiation and performance evaluation exceptions are on the agenda, those discussions might be conducted. Similarly, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

PRACTICE TIP: Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions applies to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),[4] the Brown Act does not authorize closed sessions for other contract negotiations.

Agendas and reports

Closed session items must be briefly described on the posted agenda, and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly put on the agenda as a

closed session item or unless it is properly added as a closed-session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill-in-the-blank sample agenda descriptions for various types of authorized closed sessions that provide a "safe harbor" from legal attacks. These sample agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multijurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda, and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[8] The legislative body must take public comment on the closed session item before convening in a closed session.

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report vary according to the reason for the closed session and the action taken.[9] The announcements may be made at the site of the closed session, as long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[10]

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.[11] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.[12] A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

Litigation

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation.[13] The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. Essentially, a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.[14] The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.[15] For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.[16]

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.[17] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.[18]

Existing litigation

Q. May the legislative body agree to settle a lawsuit in a properly noticed closed session without placing the settlement agreement on an open session agenda for public approval?

A. *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*[19]

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[20]

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[21] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff. If an agency receives a documented threat of litigation, and intends to discuss that matter in closed session, the record of a litigation threat must be included in the body's agenda packet.[22]

Anticipated initiation of litigation by the local agency

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

Certain actions must be reported in open session at the same meeting following the closed session. Other actions, such as when final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[23] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[24] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues, such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[25]

Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern,[26] and the names of the parties with whom its negotiator may negotiate.[27]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person as soon as the agency is informed of it.[28]

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

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

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

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.

PRACTICE TIP: Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

Public employment

The Brown Act authorizes a closed session "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."[29] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[30] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[31] That authority may be delegated to a subsidiary appointed body.[32]

An employee must be given at least 24 hours' notice of any closed session convened to hear specific complaints or charges against them. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[33] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[34] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[35] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[36]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[37]

Q. Must 24 hours' notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

A. *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[38] An incorrect agenda description can result in invalidation of an action and much embarrassment.

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[39] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

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

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[40] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[41]

> **"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager effective immediately. The council has met in closed session, and we've negotiated six months' severance pay."**
>
> **"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**
>
> *This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution must be exercised not to discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

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

Labor negotiations

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

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[42] on employee salaries and fringe benefits for both represented ("union") and unrepresented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[43]

PRACTICE TIP: Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[44]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[45] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

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

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

1. A negotiating session with a recognized or certified employee organization.
2. A meeting of a mediator with either side.
3. A hearing or meeting held by a fact finder or arbitrator.
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[46]

Public participation under the Rodda Act also takes another form.[47] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[48] The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[49]

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

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[50] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[51]

Joint powers authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[52]

License applicants with criminal records

A closed session is permitted when an applicant who has a criminal record applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw it, the body must deny the license in public, either immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[53]

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings; essential public services, including water, sewer, gas, or electric service; or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials, including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[54] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an ongoing criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[55]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[56]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals under other provisions of law:[57]

1. A meeting to hear reports of hospital medical audit or quality assurance committees or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information that is not generally known to the public or competitors and that (1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; (2) is necessary to initiate a new hospital service or program or facility; and (3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[58]

Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to review the Brown Act carefully to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including a response to a confidential final draft audit report from the Bureau of State Audits,[59] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[60] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[61] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[62] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[63]

PRACTICE TIP: Meetings are either open or closed. There is nothing "in between."[64]

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official or essential role in the closed session subject matters must be excluded from closed sessions.[65]

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

A. *No, attendance in closed sessions is reserved exclusively for the agency's advisors.*

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[66] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[67] Only the legislative body acting as a body may agree to divulge confidential closed session information. With regard to attorney-client privileged communications, the entire body is the holder of the privilege, and only the entire body can decide to waive the privilege.[68]

PRACTICE TIP: There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information regarding pending litigation that was received during a closed session,[69] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[70] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief and, if the breach is a willful disclosure of confidential information, disciplinary action against an employee and referral of a member of the legislative body to the grand jury.[71]

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure (1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; (2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or (3) is information that is not confidential.[72]

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

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the city council in closed session that must be reported publicly.[73] The second comment to the property owner is not. Disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

ENDNOTES

1 Cal. Gov. Code, § 54962.

2 Cal. Const. , Art. 1, § 3.

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see Cal. Gov. Code, § 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations and other related matters).

4 Cal. Gov. Code, § 54957.1.

5 Cal. Gov. Code, § 54954.5.

6 Cal. Gov. Code, § 54954.2.

7 Cal. Gov. Code, § 54954.5.

8 Cal. Gov. Code, §§ 54956.9, 54957.7.

9 Cal. Gov. Code, § 54957.1, subd. (a).

10 Cal. Gov. Code, § 54957.1, subd. (b).

11 Cal. Gov. Code, § 54957.2.

12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal. Code Regs. § 18707.

13 But see *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 (protection of the attorney-client privilege alone cannot by itself be the reason for a closed session).

14 Cal. Gov. Code, § 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).

15 82 Ops.Cal.Atty.Gen. 29 (1999).

16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471.

17 *"The Brown Act,"* California Attorney General (2003), p. 40.

18 Cal. Gov. Code, § 54956.9, subd. (g).

19 See e.g., Avco Community Developers, Inc. v. South Coast Regional Com. (1976) 17 Cal.3d 785; Trancas Property Owners Assn. v. City of Malibu (2006) 138 Cal.App.4th 172.

20 *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172.

21 Cal. Gov. Code, § 54956.9, subd. (e).

22 Fowler v. City of Lafayette (2020) 46 Cal.App.5th 360.

23 Cal. Gov. Code, § 54957.1.

24 Cal. Gov. Code, § 54956.8.

25 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904. See also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner, and timing of consideration and other items that cannot be disclosed without revealing price and terms).

26 73 Ops.Cal.Atty.Gen. 1 (1990).

27 Cal. Gov. Code, §§ 54956.8, 54954.5, subd. (b).

28 Cal. Gov. Code, § 54957.1, subd. (a)(1).

29 Cal. Gov. Code, § 54957, subd. (b).

30 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

31 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002).

32 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty.Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

33 Cal. Gov. Code, § 54957, subd. (b)(3).

34 88 Ops.Cal.Atty.Gen. 16 (2005).

35 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860.

36 Cal. Gov. Code, § 54957, subd. (b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges when there was a public evidentiary hearing prior to closed session).

37 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87.

38 *Moreno v. City of King* (2005) 127 Cal.App.4th 17.

39 Cal. Gov. Code, § 54957.

40 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165.

41 Cal. Gov. Code, § 54957.1, subd. (a)(5).

42 Cal. Gov. Code, § 54957.6.

43 Cal. Gov. Code, § 54957.6, subd. (b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not "employees" of the district).

44 Cal. Gov. Code, § 54957.6; 51 Ops.Cal.Atty.Gen. 201 (1968).

45 Cal. Gov. Code, § 54957.1, subd. (a)(6).

46 Cal. Gov. Code, § 3549.1.

47 Cal. Gov. Code, § 3540.

48 Cal. Gov. Code, § 3547.

49 Cal. Edu. Code, § 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

50 Cal. Edu. Code, § 72122.

51 Cal. Edu. Code, § 60617.

52 Cal. Gov. Code, § 54956.96.

53 Cal. Gov. Code, § 54956.7.

54 Cal. Gov. Code, § 54957.

55 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354.

56 Cal. Gov. Code, § 54957.8.

57 Cal. Gov. Code, § 54962.

58 Cal. Health and Saf. Code, § 32106.

59 Cal. Gov. Code, § 54956.75.

60 Cal. Gov. Code, § 54956.81.

61 Cal. Gov. Code, § 54956.86.

62 Cal. Gov. Code, § 54956.87.

63 Cal. Gov. Code, § 54956.95.

64 Ops.Cal.Atty.Gen. 34 (1965)

65 82 Ops.Cal.Atty.Gen. 29 (1999); 2022 WL 1814322, 105 Ops. Cal.Atty.Gen. 89 (2022).

66 Cal. Gov. Code, § 54963.

67 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327. See also Cal. Gov. Code, § 54963.

68 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

69 80 Ops.Cal.Atty.Gen. 231 (1997).

70 76 Ops.Cal.Atty.Gen. 289 (1993).

71 Cal. Gov. Code, § 54963.

72 Cal. Gov. Code, § 54963.

73 Cal. Gov. Code, § 54957.1.

Chapter 6

REMEDIES

Invalidation of action taken 56

Declaratory relief to determine whether past action violated the act..... 57

Civil action to prevent future violations..... 57

Costs and attorney's fees 58

Misdemeanor penalties 58

Voluntary resolution..... 59

Chapter 6

REMEDIES

A violation of the Brown Act can lead to invalidation of the agency's action, payment of a challenger's attorney fees, public embarrassment, and even criminal prosecution. As explained below, a legislative body often has an opportunity to correct a violation prior to the filing of a lawsuit. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation of action taken

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the grounds that they violate the Brown Act.[1] The following actions cannot be invalidated:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites the wrong Brown Act section but adequately advises the public that the legislative body will meet with legal counsel to discuss potential litigation in closed session.[2]
- Those involving the sale or issuance of notes, bonds, or other indebtedness, or any related contracts or agreements.[3]
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment.[4]
- Those connected with the collection of any tax.[5]
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.[6]

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation, or within 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that a legislative body may act only on items posted on the agenda.[7] The legislative body then has up to 30 days to cure and correct its action.[8] The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and, if so, consider correcting the action to avoid the costs of litigation. If the legislative body does not act, any lawsuit must be filed within the next 15 days.[9]

Although just about anyone has standing to bring an action for invalidation,[10] the challenger must show prejudice as a result of the alleged violation.[11] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[12]

Declaratory relief to determine whether past action violated the act

Any interested person, including the district attorney, may file a civil action to determine whether a past action of a legislative body constitutes a violation of the Brown Act and is subject to a mandamus, injunction, or declaratory relief action.[13] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body clearly describing the past action and the nature of the alleged violation.[14] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[15] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, the interested person has 60 days to file an action.[16]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[17] The unconditional commitment must be substantially in the form set forth in the Brown Act.[18] No legal action may thereafter be commenced regarding the past action.[19] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act, and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[20]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[21]

Civil action to prevent future violations

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

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body.
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body.
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law.
- Compel the legislative body to audio-record its closed sessions.[22]

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future when the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[23] A court may not compel elected officials to disclose their recollections of what transpired in a closed session.[24]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to audio record its future closed sessions.[25] In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the audio recording if it finds there is good cause to think the Brown Act has been violated and make public a certified transcript of the relevant portion of the closed session recording.[26]

Costs and attorney's fees

A plaintiff who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[27] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Brown Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[28]

Misdemeanor penalties

A violation of the Brown Act is a misdemeanor if (1) a member of the legislative body attends a meeting where action is taken in violation of the Brown Act, and (2) the member intends to deprive the public of information that the member knows or has reason to know the public is entitled to.[29]

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

"Action taken" is not only an actual vote but also a collective decision, commitment, or promise by a majority of the legislative body to make a positive or negative decision.[30] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[31] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[32] There is no case law to support this view. If anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[33]

Voluntary resolution

Successful enforcement actions for violations of the Brown Act can be costly to local agencies. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body and its members. It is in the agency's interest to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

Overall, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

ENDNOTES

1 Cal. Gov. Code, § 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision), sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions), 54954.6 (tax hearings), 54956 (special meetings), and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but they are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198.

3 Cal. Gov. Code, § 54960.1(d)(2).

4 Cal. Gov. Code, § 54960.1(d)(3).

5 Cal. Gov. Code, § 54960.1(d)(4).

6 Cal. Gov. Code, § 54960.1(d)(5).

7 Cal. Gov. Code, § 54960.1, subds. (b), (c)(1).

8 Cal. Gov. Code, § 54960.1, subd. (c)(2).

9 Cal. Gov. Code, § 54960.1, subd. (c)(4).

10 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310, 1318-1319.

11 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561.

12 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118.

13 Cal. Gov. Code, § 54960.2, subd. (a); Senate Bill No. 1003, Section 4 (2011-2012 Session).

14 Cal. Gov. Code, § 54960.2, subds. (a)(1), (2).

15 The legislative body may provide an unconditional commitment after the 30-day period. If the commitment is made after the 30-day period, however, the plaintiff is entitled to attorneys' fees and costs. Cal. Gov. Code, § 54960.2, subd. (b).

16 Cal. Gov. Code, § 54960.2, subd. (a)(4).

17 Cal. Gov. Code, § 54960.2, subd. (c)(2).

18 Cal. Gov. Code, § 54960.2, subd. (c)(1).

19 Cal. Gov. Code, § 54960.2, subd. (c)(3).

20 Cal. Gov. Code, § 54960.2, subd. (d).

21 Cal. Gov. Code, § 54960.2, subd. (e).

22 Cal. Gov. Code, § 54960, subd. (a).

23 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 916 and fn.6.

24 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36.

25 Cal. Gov. Code, § 54960, subd. (b).

26 Cal. Gov. Code, § 54960, subd. (c).

27 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein.

28 Cal. Gov. Code, § 54960.5.

29 Cal. Gov. Code, § 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both (California Penal Code section 19). Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

30 Cal. Gov. Code, § 54952.6.

31 61 Ops.Cal.Atty.Gen. 283 (1978).

32 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

33 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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The People's Business

A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

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Contents

Chapter 1 – Introduction and Overview 5

ORIGINS OF THE PUBLIC RECORDS ACT 5

2023 REVISIONS TO THE PUBLIC RECORDS ACT 5

FUNDAMENTAL RIGHT OF ACCESS TO GOVERNMENT INFORMATION 6

EXEMPTIONS FROM DISCLOSURE — PROTECTING THE PUBLIC'S FUNDAMENTAL RIGHT OF PRIVACY AND NEED FOR EFFICIENT AND EFFECTIVE GOVERNMENT 6

- Achieving Balance 7

INCORPORATION OF THE PRA INTO THE CALIFORNIA CONSTITUTION 9

- Proposition 59 9
- Proposition 42 9

EXPANDED ACCESS TO LOCAL GOVERNMENT INFORMATION 10

EQUAL ACCESS TO GOVERNMENT RECORDS 11

ENFORCED ACCESS TO PUBLIC RECORDS 11

THE PRA AT THE CRUX OF DEMOCRATIC GOVERNMENT IN CALIFORNIA 11

Chapter 2 – The Basics 12

WHAT ARE PUBLIC RECORDS? 12

- Writings 12
- Information Relating to the Conduct of Public Business 13
- Prepared, Owned, Used, or Retained 13
- Regardless of Physical Form or Characteristics 15
- Metadata 15
- Agency-Developed Software 15
- Computer Mapping (GIS) Systems 16

SPECIFICALLY IDENTIFIED RECORDS 16

WHAT AGENCIES ARE COVERED? 16

WHO CAN REQUEST RECORDS? 17

Chapter 3 – Responding to a Public Records Request 18

LOCAL AGENCY'S DUTY TO RESPOND TO PUBLIC RECORD REQUESTS 18

TYPES OF REQUESTS — RIGHT TO INSPECT OR COPY PUBLIC RECORDS 18

- Right to Inspect Public Records 19
- Right to Copy Public Records 20

FORM OF THE REQUEST 20

CONTENT OF THE REQUEST 21

TIMING OF THE RESPONSE 22

- Inspection of Public Records 22
- Copies of Public Records 22
- Extending the Response Times for Copies of Public Records 23

TIMING OF DISCLOSURE 24

ASSISTING THE REQUESTER 24

LOCATING RECORDS 24

TYPES OF RESPONSES 25

REDACTING RECORDS 26

NO DUTY TO CREATE A RECORD OR A PRIVILEGE LOG 26

FEES 27

WAIVER 28

Chapter 4 – Specific Document Types, Categories, and Exemptions from Disclosure 29

OVERVIEW OF EXEMPTIONS 29

TYPES OF RECORDS AND SPECIFIC EXEMPTIONS 30

- Architectural and Official Building Plans 30
- Attorney-Client Communications and Attorney Work Product 31
  - Attorney-Client Privilege 31
  - Attorney Work Product 32
  - Common Interest Doctrine 32
  - Attorney Bills and Retainer Agreements 33
- CEQA Proceedings 33
- Code Enforcement Records 34
- Deliberative Process Privilege 34
- Drafts 35
- Elections 36
  - Voter Registration Information 36
  - Initiative, Recall, and Referendum Petitions 37

Identity of Informants 37
Information Technology Systems Security Records 38
Law Enforcement Records 38
Overview 38
Exempt Records 39
Information that Must be Disclosed 40
Disclosure to Victims, Authorized Representatives, and Insurance Carriers 40
Information Regarding Arrestees 41
Complaints or Requests for Assistance 42
Requests for Journalistic or Scholarly Purposes 42
Video or Audio Recordings that Relate to Critical Incidents 43
Coroner Photographs or Video 43
Automated License Plate Readers Data 44
Mental Health Detention Information 44
Elder Abuse Records 44
Juvenile Records 44
Child Abuse Reports 45
Library Patron Use Records 45
Library Circulation Records 45
Licensee Financial Information 46
Medical Records 46
Health Data and Advisory Council Consolidation Act 46
Physician/Patient Privilege 47
Confidentiality of Medical Information Act 47
Health Insurance Portability and Accountability Act 47
Workers' Compensation Benefits 48
Official Information Privilege 48
Pending Litigation or Claims 49
Personal Contact Information 51
Posting Personal Contact Information of Elected/Appointed Officials on the Internet 52
Personnel Records 52
Peace Officer Personnel Records 53
Employment Contracts, Employee Salaries, & Pension Benefits 57
Contractor Payroll Records 58
Test Questions and Other Examination Data 59
Public Contracting Documents 59
Real Estate Appraisals and Engineering Evaluations 60
Recipients of Public Assistance 60
Taxpayer Information 61
Trade Secrets and Other Proprietary Information 61
Utility Customer Information 62
PUBLIC INTEREST EXEMPTION 63

Chapter 5 – Judicial Review and Remedies 65

OVERVIEW 65

THE TRIAL COURT PROCESS 65

Timing 66
Discovery 66
Burden of Proof 67
In Camera Review 67
Decision and Order 67

REVERSE PRA LITIGATION 67

APPELLATE REVIEW 68

Petition for Review 68

Timing 68
Requesting a Stay 69
Scope and Standard of Review 69
Appeal of Other Decisions under the PRA 69

ATTORNEYS' FEES AND COSTS 69

Eligibility to Recover Attorneys' Fees 70

Chapter 6 – Records Management 71

PUBLIC MEETING RECORDS 71

MAINTAINING ELECTRONIC RECORDS 72

Metadata 73
Computer Software 73
Computer Mapping (GIS) Systems 74
Public Contracting Records 74

ELECTRONIC DISCOVERY 74

RECORD RETENTION AND DESTRUCTION LAWS 75

Records Covered by the Records Retention Laws 76

Appendix 1
FREQUENTLY REQUESTED INFORMATION AND RECORDS 77

Appendix 2
CALIFORNIA LAW REVISION COMMISSION'S DISPOSITION TABLE 83

Appendix 3
CALIFORNIA LAW REVISION COMMISSION'S DERIVATION TABLE 89

Chapter 1

Introduction and Overview

Origins of the Public Records Act

The California Public Records Act (the PRA) was enacted in 1968 to: (1) safeguard the accountability of government to the public; (2) promote maximum disclosure of the conduct of governmental operations; and (3) explicitly acknowledge the principle that secrecy is antithetical to a democratic system of "government of the people, by the people and for the people."[1] The PRA was enacted against a background of legislative impatience with secrecy in government and was modeled on the federal Freedom of Information Act (FOIA) enacted a year earlier.[2] When the PRA was enacted, the Legislature had been attempting to formulate a workable means of minimizing secrecy in government. The resulting legislation replaced a confusing mass of statutes and court decisions relating to disclosure of government records.[3] The PRA was the culmination of a 15-year effort by the Legislature to create a comprehensive general public records law.

2023 Revisions to the Public Records Act

In 2021, the legislature enacted the CPRA Recodification Act (AB 473). This Act, effective Jan. 1, 2023, renumbered and reorganized the PRA in a new Division 614 of the Government Code, beginning at section 7920.005. Nothing in AB 473 was "intended to substantially change the law relating to inspection of public records."[4] The changes were intended to be "entirely nonsubstantive in effect. Every provision of this division and every other provision of [AB 473], shall be interpreted consistent with the nonsubstantive intent of the act."[5]

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1 Gov. Code, § 7920.000 *et. seq.* (formerly Gov. Code, § 6250 *et seq.);* Stats 1968, Ch. 1473; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651–652; 52 Ops.Cal.Atty.Gen 136, 143; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771–772.

2 *San Gabriel Tribune v. Superior Court, supra,* 143 Cal.App.3d at p. 772; 5 U.S.C. §552 *et seq.*, 81 Stat. 54; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447; *CBS, Inc. v. Block, supra, 42 Cal.3d at p. 651.* The basic purpose of the FOIA is to expose agency action to the light of public scrutiny. *U.S. Dept. of Justice v. Reporters Com. for Freedom of Press* (1989) 489 US 749, 774.

3 *San Gabriel Tribune v. Superior Court, supra,* 143 Cal.App.3d at p. 772; *American Civil Liberties Union Federation v. Deukmejian, supra,* 32 Cal.3d at p. 447.

4 Gov. Code, § 7920.100.

5 *Ibid.*

Case law interpreting the prior version of the PRA applies to new provisions that restate and continue the previously existing provisions.[6] AB 473 is "not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by [AB 473]."[7]

Fundamental Right of Access to Government Information

The PRA is an indispensable component of California's commitment to open government. The PRA expressly provides that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."[8] The purpose is to give the public access to information that enables them to monitor the functioning of their government.[9] The concept that access to information is a fundamental right is not new to United States jurisprudence. Two hundred years ago James Madison observed "[k]nowledge will forever govern ignorance and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or tragedy or perhaps both."[10]

The PRA provides for two different rights of access. One is a right to inspect public records: "Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided."[11] The other is a right to prompt availability of copies of public records:

> 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.[12]

Agency records policies and practices must satisfy both types of public records access — by permitting inspection and by providing copies of public records — that the PRA guarantees.

Exemptions from Disclosure — Protecting the Public's Fundamental Right of Privacy and Need for Efficient and Effective Government

The PRA's fundamental precept is that governmental records shall be disclosed to the public, upon request, unless there is a legal basis not to do so.[13] The right of access to public records under the PRA is not unlimited; it does not extend to records that are exempt from disclosure. Express legal authority is required to justify denial of access to public records.

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6 Gov. Code, § 7920.110, subd. (a).

7 Gov. Code, § 7920.110, subd. (c).

8 Gov. Code, § 7921.000 (formerly Gov. Code, § 6250).

9 *CBS, Inc. v. Block, supra,* 42 Cal.3d at p. 651; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1350.

10 *San Gabriel Tribune v. Superior Court, supra,* 143 Cal.App.3d at p. 772, citing Shaffer et al., *A Look at the California Records Act and Its Exemptions* (1974) 4 Golden Gate L Rev 203, 212.

11 Gov. Code, § 7922.525, subd. (a) (formerly Gov. Code, § 6253, subd. (a)).

12 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

13 *Ibid.*

PRACTICE TIP:

There is no general exemption authorizing non-disclosure of government records on the basis the disclosure could be inconvenient or even potentially embarrassing to a local agency or its officials. Disclosure of such records is one of the primary purposes of the PRA.

The PRA itself currently contains numerous exemptions from disclosure.[14] Despite the Legislature's goal of accumulating all of the exemptions from disclosure in one place, there are also numerous laws outside the PRA that create exemptions from disclosure. The PRA lists other laws that exempt particular types of government records from disclosure.[15]

The exemptions from disclosure contained in the PRA and other laws reflect two recurring interests. Many exemptions are intended to protect privacy rights.[16] Many other exemptions are based on the recognition that, in addition to the need for the public to know what its government is doing, there is a need for the government to perform its assigned functions in a reasonably efficient and effective manner, and to operate on a reasonably level playing field in dealing with private interests.[17]

Achieving Balance

The Legislature in enacting the PRA struck a balance among competing, yet fundamental interests: government transparency, privacy rights, and government effectiveness. The legislative findings declare access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state and the Legislature is "mindful of the right of individuals to privacy."[18] "In the spirit of this declaration, judicial decisions interpreting the [PRA] seek to balance the public right to access to information, the government's need, or lack of need, to preserve confidentiality, and the individual's right to privacy."[19]

Approximately half of the current exemptions from disclosure contained in the PRA appear intended primarily to protect privacy interests.[20] A significant number of the exemptions appear intended primarily to support effective

14 Gov. Code, § 7921.000 *et. seq.* (formerly Gov. Code, § 6250 *et seq.*). There are currently over 75 exemptions.

15 Gov. Code, § 7930.000 *et. seq.* (formerly Gov. Code, § 6275 *et seq.).*

16 See, e.g., "Personnel Records," p. 52.

17 See, e.g., "Attorney Client Communications and Attorney Work Product," p. 31.

18 Gov. Code, § 7920.000 (formerly Gov. Code, § 6250); Cal Const., art. I, § 3(b)(3).

19 *American Civil Liberties Union Foundation v. Deukmejian, supra,* 32 Cal.3d at p. 447.

20 See e.g., Gov. Code, §§ 7926.300 (formerly 6253.2); 7924.100-7924.110 (formerly 6253.5); 7924.005 (formerly 6253.6); 7927.700 (formerly 6254, subd. (c)); 7925.000 (formerly 6254, subd. (i)); 7927.100 (formerly 6254, subd. (j)); 7925.005 (formerly 6254, subd. (n)); 7924.505 (formerly 6254, subd. (o)), 7927.000 (formerly 6254, subd. (r)); 7923.800 (formerly 6254, subd. (u)(1)); 7923.805 (formerly 6254, subds. (u)(2)-(u)(3); 7925.010 (formerly 6254, subd. (x)); 7923.700 (formerly 6254, subd. (z)); 7926.100 (formerly 6254, subd. (ac)); 7929.400 (formerly 6254, subd. (ad)-(ad)(1)); 7929.415 (formerly 6254, subd. (ad)(4)); 7929.420 (formerly 6254, subd. (ad)(5)); 7929.425 (formerly 6254, subd. (ad)(6)); 7927.415 (formerly 6254.1, subd. (a)); 7927.405 (formerly 6254.1 (b)); 7929.600 (formerly 6254.1, subd. (c)); 7924.300-7924.335 (formerly 6254.2); 7928.300 (formerly 6254.3); 7924.000 (formerly 6254.4); 7927.005 (formerly 6254.10); 7924.500 (formerly 6254.11); 7929.610 (formerly 6254.13); 7927.605 (formerly 6254.15); 7927.410 (formerly 6254.16); 7923.755 (formerly 6254.17); 7926.400-7926.430 (formerly 6254.18); 7927.400 (formerly 6254.20); 7928.200-7928.230 (formerly 6254.21); 7922.200 (formerly 6254.29); 7927.105 (formerly 6267); 7928.005 & 7928.010 (formerly 6268).

governmental operation in the public's interest.[21] A few exemptions appear to focus equally on protecting privacy rights and effective government. Those include: an exemption for law enforcement records; an exemption that incorporates into the PRA exemptions from disclosure in other state and federal laws, including privileges contained in the Evidence Code; and the "public interest" or "catch-all" exemption, where, based on the particular facts, the public interest in not disclosing the record clearly outweighs the public interest in disclosure.[22] Additionally, the deliberative process privilege reflects both the public interests in privacy and government effectiveness by affording a measure of privacy to decision-makers that is intended to aid in the efficiency and effectiveness of government decision-making.[23]

The balance that the PRA strikes among the often-competing interests of government transparency and accountability, privacy rights, and government effectiveness intentionally favors transparency and accountability. The PRA is intended to reserve "islands of privacy upon the broad seas of enforced disclosure."[24] For the past five decades, courts have balanced those competing interests in deciding whether to order disclosure of records.[25] The courts have consistently construed exemptions from disclosure narrowly and agencies' disclosure obligations broadly.[26] Ambiguities in the PRA must be interpreted in a way that maximizes the public's access to information unless the Legislature has expressly provided otherwise.[27]

The PRA requires local agencies, as keepers of the public's records, to balance the public interests in transparency, privacy, and effective government in response to records requests. Certain provisions in the PRA help maintain the balancing scheme established under the PRA and the cases interpreting it by prohibiting state and local agencies from delegating their balancing role and making arrangements with other entities that could limit access to public records. For example, state and local agencies may not allow another party to control the disclosure of information otherwise subject to disclosure under the PRA.[28] Also, state and local agencies may not provide public records subject to disclosure under the PRA to a private entity in a way that prevents a state or local agency from providing the records directly pursuant to the PRA.[29]

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21 The following exemptions contained in the PRA appear primarily intended to support effective government: Gov. Code, §§ 7927.500 (formerly 6254, subd. (a)); 7927.200 (formerly 6254, subd. (b)); 7929.000 (formerly 6254, subd. (d)); 7927.300 (formerly 6254, subd. (e)); 7929.605 (formerly 6254, subd. (g)); 7928.705 (formerly 6254, subd. (h)); 7928.000 (formerly 6254, subd. (l)); 7928.100 (formerly 6254, subd. (m)); 7928.405-7928-410 (formerly 6254, subd. (p)); 7926.220 (formerly 6254, subd. (q)); 7926.000 (formerly 6254, subd. (s)); 7926.210 (formerly 6254, subd. (t)); 7926.225, subds. (a)-(d) (formerly 6254, subds. (v)(1), (v)(1)(A), (v)(1)(B)); 7926.235 (formerly 6254, subd. (w)); 7926.230 (formerly 6254, subd. (y)); 7929.200 (formerly 6254, subd. (aa)); 7929.205 (formerly 6254, subd. (ab)); 7929.405-7929.410 (formerly 6254, subds. (ad)(2) & (ad)(3)); 7927.600 (formerly 6254.6); 7924.510 (formerly 6254.7); 7922.585 (formerly 6254.9); 7926.215 (formerly 6254.14); 7929.210 (formerly 6254.19); 7926.205 (formerly 6254.22); 7929.215 (formerly 6254.23); 7927.205 (formerly 6254.25); 7928.710 (formerly 6254.26); 7922.205 (formerly 6254.27); 7922.210 (formerly 6254.28).

22 Gov. Code, §§ 7923.600-7293.625, 7927.705 (formerly §§ 6254, subds. (f) and (k); Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).

23 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at pp. 1339–1344.

24 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653.

25 *Times Mirror Co. v. Superior Court, supra,* 53 Cal.3d at p. 1344; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1144.

26 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585; *San Gabriel Tribune v. Superior Court (1983)* 143 Cal.App.3d 762, 772–773.

27 *Sierra Club v. Superior Court of Orange County* (2013) 57 Cal.4th 157, 175–176.

28 Gov. Code, § 7921.005 (formerly Gov. Code, § 6253.3).

29 Gov. Code, § 7921.010 (formerly Gov. Code, § 6270, subd. (a)).

PRACTICE TIP:

Even though contracts or settlement agreements between agencies and private parties may require that the parties give each other notice of requests for the contract or settlement agreement, such agreements cannot purport to permit private parties to dictate whether the agreement is a public record subject to disclosure.

Incorporation of the PRA into the California Constitution

Proposition 59

In November 2004, the voters approved Proposition 59, which amended the California Constitution to include the public's right to access public records: "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."[30] As amended, the California Constitution provides each statute, court rule, and other authority "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."[31] The Proposition 59 amendments expressly retained and did not supersede or modify other existing constitutional, statutory, or regulatory provisions, including the rights of privacy, due process, and equal protection, as well as any constitutional, statutory, or common-law exception to the right of access to public records in effect on the amendments' effective date. That includes any statute protecting the confidentiality of law enforcement and prosecution records.[32]

The courts and the California Attorney General have determined that the constitutional provisions added by Proposition 59 maintain the established principles that disclosure obligations under the PRA must be construed broadly, and exemptions construed narrowly.[33] By approving Proposition 59, the voters have incorporated into the California Constitution the PRA policy prioritizing government transparency and accountability, as well as the PRA's careful balancing of the public's right of access to government information with protections for the public interests in privacy and effective government. No case has yet held Proposition 59 substantively altered the balance struck in the PRA between government transparency, privacy protection, and government effectiveness.

Proposition 42

In June 2014, the voters approved Proposition 42, which amended the California Constitution "to ensure public access to the meetings of public bodies and the writings of public officials and agencies."[34] As amended, the Constitution requires local agencies to comply with the PRA, the Ralph M. Brown Act (The Brown Act), any subsequent amendments to either act, any successor act, and any amendments to any successor act that contain findings that the legislation furthers the purposes of public access to public body meetings and public official and agency writings.[35] As amended, the Constitution also no longer requires the state to reimburse local governments for the cost of complying with

30 Cal. Const., art. I, § 3, subd. (b)(1).

31 Cal. Const., art. I, § 3, subd. (b)(2).

32 Cal. Const. art. I, § 3, subds. (b)(3), (b)(4) & (b)(5).

33 *Sierra Club v. Superior Court of Orange County, supra,* 57 Cal.4th at pp. 175–176; *Sutter's Place, v. Superior Court* (2008) 161 Cal.App.4th 1370, 1378–1381; *Los Angeles Unified Sch. Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765; *P.O.S.T. v. Superior Court* (2007) 42 Cal.4th 278, 305; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750; 89 Ops.Cal.Atty.Gen. 204, 211 (2006); 88 Ops.Cal.Atty.Gen. 16, 23 (2005); 87 Ops.Cal.Atty.Gen. 181, 189 (2004).

34 Cal. Const., art. I, § 3, subd. (b)(7).

35 Cal. Const., art. I, § 3, subd. (b)(7).

legislative mandates in the PRA, the Brown Act, and successor statutes and amendments.[36] Following the enactment of Proposition 42, the Legislature has enacted new local mandates related to public records, including requirements for agency data designated as "open data" that is kept on the Internet and requirements to create and maintain "enterprise system catalogs."[37]

Expanded Access to Local Government Information

The policy of government records transparency mandated by the PRA is a floor, not a ceiling. Most exemptions from disclosure that apply to the PRA are permissive, not mandatory.[38] Local agencies may choose to disclose public records even though they are exempt, although they cannot be required to do so.[39] The PRA provides that "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 chapter."[40] A number of local agencies have gone beyond the minimum mandates of the PRA by adopting their own "sunshine ordinances" to afford greater public access to public records. Such "sunshine ordinances," however, do not authorize a locality to enact an ordinance addressing records access that conflicts with the locality's governing charter.[41]

Local agency disclosure of exempt records can promote the government transparency and accountability purposes of the PRA. However, local agencies are also subject to mandatory duties to safeguard some particularly sensitive records.[42] Unauthorized disclosure of such records can subject local agencies and their officials to civil, and in some cases, criminal liability.

> ▶ **PRACTICE TIP:**
>
> Local agencies that expand on the minimum transparency prescribed in the PRA, which is something that the PRA encourages, should ensure that they do not violate their duty to safeguard certain records, or undermine the public's interest in effective government.

36 Cal. Const., art. XIIIB, §6, subd. (a)(4). Proposition 42 was a legislatively-referred constitutional amendment in response to public opposition to AB 1464 and SB 1006 approved June, 2012. The 2012 legislation suspended certain PRA and Brown Act provisions and was intended to eliminate the state's obligation to reimburse local governments for the cost of complying with PRA and Brown Act mandates through the 2015 fiscal year. There is no record of local agencies ceasing to comply with the suspended provisions.

37 Gov. Code, §§ 7922.680, 7922.700-7922.725 (formerly Gov. Code, §§ 6253.10, 6270.5).

38 *Black Panther Party v. Kehoe, supra,* 42 Cal.App.3d at p. 656.

39 See Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5) and "Waiver," p. 28, regarding the effect of disclosing exempt records.

40 Gov. Code, § 7922.505 (formerly Gov. Code, § 6253, subd. (e)).

41 *St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434, 446. ("Because the charter incorporates the [attorney-client] privilege, an ordinance (whether enacted by the City's board of supervisors or by the voters) cannot eliminate it, either by designating as not confidential a class of material that otherwise would be protected by the privilege, or by waiving the privilege as to that category of documents; only a charter amendment can achieve that result.").

42 E.g., individually-identifiable medical information protected under state and federal law (Civ. Code. §§ 56.10(a), 56.05(g); 42 U.S.C. § 1320d-1-d-3); child abuse and neglect records (Pen. Code, § 11167.5); elder abuse and neglect records (Welf. & Inst. Code, §15633); mental health detention records (Welf. & Inst. Code, §§ 5150, 5328).

Equal Access to Government Records

The PRA affords the same right of access to government information to all types of requesters. Every person has a right to inspect any public record, except as otherwise provided in the PRA, including citizens of other states and countries, elected officials, and members of the press.[43] With few exceptions, whenever a local agency discloses an exempt public record to any member of the public, unless the disclosure was inadvertent, all exemptions that apply to that particular record are waived and it becomes subject to disclosure to any and all requesters.[44] Accordingly, the PRA ensures equal access to government information by preventing local agencies form releasing exempt records to some requesters but not to others.

Enforced Access to Public Records

To enforce local agencies' compliance with the PRA's open government mandate, the PRA provides for the award of court costs and attorneys' fees to plaintiffs who successfully seek a court ruling ordering disclosure of withheld public records.[45] The attorney's fees policy enforcing records transparency is liberally applied.[46]

The PRA at the Crux of Democratic Government in California

Ongoing, important developments in PRA-related constitutional, statutory, and decisional law continue to reflect the central role government's handling of information plays in balancing tensions inherent in democratic society: considerations of privacy and government transparency, accountability, and effectiveness. Controversial records law issues in California have included government's use of social media and new law enforcement technologies, and treatment of related records; management and retention of public officials' emails; open data standards for government information; disclosure of attorney bills; and new legal means for preserving or opposing access to government information.[47] Regarding all those issues and others, the PRA has been, and continues to be an indispensable and dynamic arena for simultaneously preserving information transparency, privacy, and effective government, which the California Constitutional and statutory frameworks are intended to guarantee, and on which California citizens continue to insist.

43 Gov. Code, §§ 7922.525, 7920.520, 7921.305 (formerly Gov. Code, §§ 6253, subd. (a); 6252, subd. (c); 6252.5); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 610-612. See "Who Can Request Records," p. 17.

44 Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5). Section 7921.505 does not apply to inadvertent disclosure of exempt documents. *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1182–1183; *Newark Unified School Dist. v. Superior Court* (2015) 245 Cal.App.4th 887, 894. See "Waiver," p. 28.

45 Gov. Code, § 7923.115, subds. (a)-(b) (formerly Gov. Code, § 6259, subd. (d)). See "Attorneys Fees and Costs," p. 61.

46 See "Attorneys Fees and Costs," p. 69.

47 *American Civil Liberties Union Foundation of Southern California v. Superior Court* (review granted July 29, 2015, S227106; superseded opinion at 236 Cal. App.4th 673); *Regents of the Univ. of Cal. v. Superior Court* (2013) 222 Cal.App.4th 383, 399; *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608; Gov. Code, §§ 6253.10, 6270.5; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1265; *County of Los Angeles Board of Supervisors v. Superior Court* (review granted July 8, 2015, S226645; superseded opinion at 235 Cal.App.4th 1154).

Chapter 2

The Basics

The PRA "embodies a strong policy in favor of disclosure of public records."[48] As with any interpretation or construction of legislation, the courts will "first look at the words themselves, giving them their usual and ordinary meaning."[49] Definitions found in the PRA establish the statute's structure and scope, and guide local agencies, the public, and the courts in achieving the legislative goal of disclosing local agency records while preserving equally legitimate concerns of privacy and government effectiveness.[50] It is these definitions that form the "basics" of the PRA.

What are Public Records?

The PRA defines "public records" as "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."[51] The term "public records" encompasses more than simply those documents that public officials are required by law to keep as official records. Courts have held that a public record is one that is "necessary or convenient to the discharge of [an] official duty[,]" such as a status memorandum provided to the city manager on a pending project.[52]

Writings

A writing is defined as "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."[53]

48 *Lorig v. Medical Board of Cal.* (2000) 78 Cal.App.4th 462, 467; see "Fundamental Right of Access to Government Information," p. 6.

49 *People v. Lawrence* (2000) 24 Cal.4th 219, 230.

50 See "Exemptions from Disclosure — Protecting the Public's Fundamental Rights of Privacy and Need for Efficient and Effective Government," p.6.

51 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

52 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774.

53 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)).

The statute unambiguously states that "[p]ublic records" include "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."[54] The California Supreme Court relied on this definition to state that a public record has four aspects: "it is (1) a writing, (2) with content related to the conduct of the people's business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency."[55] Thus, unless the writing is related "to the conduct of the public's business" *and* is "prepared, owned, used or retained by" a local agency, it is not a public record subject to disclosure under the PRA. [56]

Information Relating to the Conduct of Public Business

Public records include "any writing containing information relating to the conduct of the public's business."[57] However, "[c]ommunications that are primarily personal containing no more than incidental mentions of agency business generally will not constitute public records."[58] Therefore, courts have observed that although a writing is in the possession of the local agency, it is not automatically a public record if it does not also relate to the conduct of the public's business.[59] For example, records containing primarily personal information, such as an employee's personal address list or grocery list, are considered outside the scope of the PRA.

Prepared, Owned, Used, or Retained

Writings containing information "related to the conduct of the public's business" must also be "prepared, owned, used or retained by any state or local agency" to be public records subject to the PRA.[60] What is meant by "prepared, owned, used or retained" has been the subject of several court decisions.

Writings need not always be in the physical custody of, or accessible to, a local agency to be considered public records subject to the PRA. The obligation to search for, collect, and disclose the material requested can apply to records in the possession of a local agency's consultants, which are deemed "owned" by the public agency and in its "constructive possession" when the terms of an agreement between the city and the consultant provide for such ownership.[61] Thus, where a local agency has a contractual right to control the subconsultants or their files, the records may be considered to be within their "constructive possession."[62] However, a mere contractual right to access documents held by a contractor is not sufficient to establish constructive possession when the agency does not have the authority to manage or control the documents.[63]

54 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252(e)); *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399; *Braun v. City of Taft*, *supra*, 154 Cal.App.3d at p. 340; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p.774.

55 *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.

56 *Regents of the University of California v. Superior Court, supra*, 222 Cal.App.4th at p. 399.

57 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

58 *City of San Jose v. Superior Court, supra,* 2 Cal.5th at p. 618-619.

59 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)); *Regents of the University of California v. Superior Court*, *supra*, 222 Cal.App.4th at pp. 403–405; *Braun v. City of Taft*, *supra*, 154 Cal.App.3d at p. 340; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d at p. 774.

60 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

61 *Consolidated Irrigation District v. Superior Court* (2013) 205 Cal.App.4th 697, 710; *City of San Jose v. Superior Court, supra*, 2 Cal.5th at p. 623.

62 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1428; *City of San Jose v. Superior Court, supra*, 2 Cal.5th at p. 623.

63 See *Anderson-Barker v. Superior Court* (2019) 31 Cal.App.5th 528, 541 ("[M]ere access to privately held information is not sufficient to establish possession or control of that information.")

The PRA has also been held to apply to records possessed by *private individuals* who perform official functions for a public agency, but only to the extent that the documents are held by the individual for public functions or historically have been provided to the agency.[64]

Likewise, documents that otherwise meet the definition of public records (including emails and text messages) are considered "retained" by the local agency even when they are actually "retained" on an employee or official's personal device or account.[65]

The California Supreme Court has provided some guidance on how a local agency can discover and manage public records located on their employees' non-governmental devices or accounts. The Court did not endorse or mandate any particular search method, and reaffirmed that the PRA does not prescribe any specific method for searching and that the scope of a local agency's search for public records need only be "calculated to locate responsive documents."[66] When a local agency receives a request for records that may be held in an employee's personal account, the local agency's first step should be to communicate the request not only to the custodian of records but also to any employee or official who may have such information in personal devices or accounts. The Court states that a local agency may then "reasonably rely" on the employees to search their own personal files, accounts, and devices for responsive materials.[67]

The Court's guidance, which includes a caveat that they "do not hold that any particular search method is required or necessarily adequate[,]" includes examples of policies and practices in other state and federal courts and agencies, including:[68]

- Reliance on employees to conduct their own searches and record segregation, so long as the employees have been properly trained on what are public records;
- Where an employee asserts to the local agency that he or she does not have any responsive records on his or her personal device(s) or account(s), he or she may be required by a court (as part of a later court action concerning a records request) to submit an affidavit providing the factual basis for determining whether the record is a public or personal record (e.g., personal notes of meetings and telephone calls protected by deliberative process privilege, versus meeting agendas circulated throughout the entire department.)[69]
- Adoption of policies that will reduce the likelihood of public records being held in an employee's private account, including a requirement that employees only use government accounts, or that they copy or forward all email or text messages to the local agency's official recordkeeping system.[70]

Documents that a local agency previously possessed but does not actually or constructively possess at the time of the request may not be public records subject to disclosure.[71]

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64 *Board of Pilot Comm'rs v. Superior Court* (2013) 218 CA4th 577, 593. But see *Regents of Univ. of Cal. v. Superior Court* (2013) 222 Cal.App.4th 383, 399 (document not prepared, owned, used, or retained by public agency is not public record even though it may contain information relating to conduct of public's business).

65 *City of San Jose v. Superior Court, supra*, 2 Cal.5th at p. 629; *Community Youth Athletic Center v. City of National City, supra,* 220 Cal.App.4th at p. 1428.

66 *City of San Jose v. Superior Court, supra*, 2 Cal.5th at p. 627.

67 *Id.* at p. 628.

68 *Id.* at pp. 627-629.

69 See *Grand Cent. Partnership, Inc. v. Cuomo* (2d. Cir. 1999) 166 F.3d 473, 481 for expanded discussion on the use of affidavit in FOIA litigation.

70 See 44 U.S.C. § 2911(a).

71 See *Am. Small Bus. League v. United States SBA* (2010) 623 F.3d 1052, (analyzed under FOIA).

Regardless of Physical Form or Characteristics

A public record is subject to disclosure under the PRA "regardless of its physical form or characteristics."[72] The PRA is not limited by the traditional notion of "writing." As originally defined in 1968, the legislature did not specifically recognize advancing technology as we consider it today. Amendments beginning in 1970 have added references to "photographs," "magnetic or punch cards," "discs," and "drums,"[73] with the current definition of "writing" adopted by the legislature in 2002.[74] Records subject to the PRA include records in any media, including electronic media, in which government agencies may possess records. This is underscored by the definition of "writings" treated as public records under the PRA, which includes "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."[75] The legislative intent to incorporate future changes in the character of writings has long been recognized by the courts, which have held that the "definition [of writing] is 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."[76]

Metadata

Electronic records may include "metadata," or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when, or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. No provision of the PRA expressly addresses metadata, and there are no reported court opinions in California considering whether or the extent to which metadata is subject to disclosure. Evolving law in other jurisdictions has held that local agency metadata is a public record subject to disclosure unless an exemption applies.[77] There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record's integrity.

> ▶ **PRACTICE TIP:**
>
> Agencies that receive requests for metadata or requests for records that include metadata should treat the requests the same way they treat all other requests for electronic information and disclose non-exempt metadata.

Agency-Developed Software

The PRA permits government agencies to develop and commercialize computer software and benefit from copyright protections so that such software is not a "public record" under the PRA. This includes computer mapping systems, computer programs, and computer graphics systems.[78] As a result, public agencies are not required to provide copies

72 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

73 Stats. 1970, c. 575, p. 1151, § 2.

74 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)); Stats. 2002, c. 1073.

75 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)).

76 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340, citing "Assembly Committee on Statewide Information Policy California Public Records Act of 1968. 1 Appendix to Journal of Assembly 7, Reg. Sess. (1970)."

77 *Lake v. City of Phoenix* (2009) 218 P.3d 1004, 1008; *O'Neill v. City of Shoreline* (2010) 240 P.3d 1149, 1154; *Irwin v. Onondaga County* (2010) 895 N.Y.S.2d 262, 268.

78 Gov. Code, § 7922.585, subds. (a), (b) (formerly Gov. Code, § 6254.9, subds. (a), (b)).

of agency-developed software pursuant to the PRA. The PRA authorizes state and local agencies to sell, lease, or license agency-developed software for commercial or noncommercial use.[79] The exception for agency-developed software does not affect the public record status of information merely because it is stored electronically.[80]

Computer Mapping (GIS) Systems

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the agency and the public. As with metadata, the PRA does not expressly address GIS information disclosure. However, the California Supreme Court has held that while GIS software is exempt under the PRA, the data in a GIS file format is a public record, and data in a GIS database must be produced.[81]

Specifically Identified Records

The PRA also expressly makes particular types of records subject to the PRA, subject to disclosure, or both. For example, the PRA provides that the following are public records:

- Contracts of state and local agencies that require a private entity to review, audit, or report on any aspect of the agency, to the extent the contract is otherwise subject to disclosure under the PRA;[82]
- Specified pollution information that state or local agencies require applicants to submit, pollution monitoring data from stationary sources, and records of notices and orders to building owners of housing or building law violations;[83]
- Employment contracts between state and local agencies and any public official or employee;[84] and
- Itemized statements of the total expenditures and disbursements of judicial agencies provided for under the State Constitution.[85]

What Agencies are Covered?

The PRA applies to state and local agencies. A state agency is defined as "every state office, officer, department, division, bureau, board and commission or other state body or agency."[86] A local agency includes a county, city (whether general law or chartered), city and county, school district, municipal corporation, special district, community college district, or political subdivision.[87] This encompasses any committees, boards, commissions, or departments

79 Gov. Code, § 7922.585, subd. (b) (formerly Gov. Code, § 6254.9, subd. (a)).

80 Gov. Code, § 7922.585, subd. (d) (formerly Gov. Code, § 6254.9, subd. (d)).

81 *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 170. See also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301.

82 Gov. Code, § 7928.700 (formerly Gov. Code, § 6253.31).

83 Gov. Code, § 7924.510 (formerly Gov. Code, § 6254.7). But see *Masonite Corp. v. County of Mendocino Air Quality Management District* (1996) 42 Cal.App.4th 436, 450–453 (regarding trade secret information that may be exempt from disclosure).

84 Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8). But see *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 817 (holding that reference in a public employee's contract to future personal performance goals, to be set and thereafter reviewed as a part of, and in conjunction with, a public employee's performance evaluation does not incorporate such documents into the employee's performance for the purposes of the Act).

85 Gov. Code, § 7928.720 (formerly Gov. Code, § 6261).

86 Gov. Code, § 7920.540, subd. (a) (formerly Gov. Code § 6252, subd. (f)). Excluded from the definition of state agency are those agencies provided for in article IV (except section 20(k)) and article VI of the Cal. Constitution.

87 Gov. Code, § 7920.510 (formerly Gov. Code, § 6252, subd. (a)).

of those entities as well. A local agency also includes "another local public agency."[88] Finally, a local agency includes a private entity, including a nonprofit entity, where that entity: (1) was created by the elected legislative body of a local agency to exercise authority that may be lawfully delegated to a private entity; (2) receives funds from a local agency, and whose governing board includes a member of the local agency's legislative body who is appointed by that legislative body and who is a full voting member of the private entity's governing board; or (3) is the lessee of a hospital, as described in subdivision (d) of Government Code section 54952.[89]

The PRA does not apply to the state Legislature or the judicial branch.[90] The Legislative Open Records Act covers the Legislature.[91] Most court records are disclosable as the courts have historically recognized the public's right of access to public records maintained by the courts under the common law and the First Amendment of the United States Constitution.[92]

Who Can Request Records?

All "persons" have the right to inspect and copy non-exempt public records. A "person" need not be a resident of California or a citizen of the United States to make use of the PRA.[93] "Persons" include corporations, partnerships, limited liability companies, firms, or associations.[94] Often, requesters include persons who have filed claims or lawsuits against the government, who are investigating the possibility of doing so, or who just want to know what their government officials are up to. With certain exceptions, neither the media nor a person who is the subject of a public record has any greater right of access to public records than any other person.[95]

Local agencies and their officials are entitled to access public records on the same basis as any other person.[96] Further, local agency officials might be authorized to access public records of their own agency that are otherwise exempt if such access is permitted by law as part of their official duties.[97] Under such circumstances, however, the local agency shall not discriminate between or among local agency officials as to which writing or portion thereof is to be made available or when it is made available.[98]

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88 *The Cmty. Action Agency of Butte Cty. v. Superior Court* (2022) 79 Cal. App. 5th 221, 237 (adopting a four-factor test to determine whether a nonprofit entity is "another local public agency" under the PRA; the factors are: (1) whether the entity performs a government function, (2) the extent to which the government funds the entity's activities, (3) the extent of government involvement in the entity's activities, and (4) whether the entity was created by the government).

89 Gov. Code, § 7920.510 (formerly Gov. Code, § 6252, subd. (a)) ("[L]ocal agency includes…[a]n entity that is a legislative body of a local agency pursuant to subdivision (c) or (d) of Section 54952 [of the Brown Act]."). See e.g., 85 Ops.Cal.Atty.Gen 55 (2002) (PRA covered private nonprofit corporation formed for the purpose of providing programming for a cable television channel set aside for educational use by a cable operator pursuant to its franchise agreement with a city and subsequently designated by the city to provide the programming services).

90 Gov. Code, §§ 7920.510, 7920.510 (formerly Gov. Code, § 6252, subds. (a), (b); *Michael J. Mack v. State Bar of Cal.* (2001) 92 Cal.App.4th 957, 962–963.

91 Gov. Code, § 9070 *et. seq.*

92 *Overstock.com v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 483–486; *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 263; *Champion v. Superior Court* (1988) 201 Cal.App.3d 777, 288; *Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 220.

93 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

94 Gov. Code, § 7920.520 (formerly Gov. Code, § 6252, subd. (c)); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601.

95 Gov. Code, § 7921.305 (formerly Gov. Code, § 6252.5); *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1279.

96 Gov. Code, § 7921.305 (formerly Gov. Code, § 6252.5).

97 *Marylander v. Superior Court* (2002) 81 Cal.App.4th 1119; *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661; *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271. See "Information That Must Be Disclosed," p. 40; "Requests for Journalistic or Scholarly Purposes," p. 42.

98 Gov. Code, § 7921.310 (formerly Gov. Code, § 6252.7).

Chapter 3

Responding to a Public Records Request

Local Agency's Duty to Respond to Public Record Requests

The fundamental purpose of the PRA is to provide access to information about the conduct of the people's business.[99] This right of access to public information imposes a duty on local agencies to respond to PRA requests and does not "permit an agency to delay or obstruct the inspection or copying of public records."[100] Even if the request does not reasonably describe an identifiable record, the requested record does not exist, or the record is exempt from disclosure, the agency must respond.[101]

Types of Requests — Right to Inspect or Copy Public Records

There are two ways to gain access under the PRA to a public record: (1) inspecting the record at the local agency's offices or on the local agency's website; or (2) obtaining a copy from the local agency.[102] The local agency may not dictate to the requester which option must be used, that is the requester's decision. Moreover, a requester does not have to choose between inspection and copying but instead can choose both options. For example, a requester may first inspect a set of records, and then, based on that review, decide which records should be copied.

99 Gov. Code, § 7920.000 (formerly Gov. Code § 6250).

100 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)).

101 Gov. Code, §§ 7922.525–7922.545 (formerly Gov. Code, § 6253).

102 Gov. Code, §§ 7922.525; 7922.530, subd. (a); 7922.545 (formerly Gov. Code, § 6253, subds. (a), (b), & (f)).

▶ PRACTICE TIP:

If the public records request does not make clear whether the requester wants to inspect or obtain a copy of the record or records being sought, the local agency should seek clarification from the requester without delaying the process of searching for, collecting, and redacting or "whiting out" exempt information in the records.

▶ PRACTICE TIP:

To protect the integrity of the local agency files and preserve the orderly function of the offices, agencies may establish reasonable policies for the inspection and copying of public records.

Right to Inspect Public Records

Public records are open to inspection at all times during the office hours of the local agency and every person has a right to inspect any public record. This right to inspect includes any reasonably segregable portion of a public record after deletion of the portions that are exempted by law.[103] This does not mean that a requester has a right to demand to see a record and immediately gain access to it. The right to inspect is constrained by an implied rule of reason to protect records against theft, mutilation, or accidental damage; prevent interference with the orderly functioning of the office; and generally avoid chaos in record archives.[104] Moreover, the agency's time to respond to an inspection request is governed by the deadlines set forth below, which give the agency a reasonable opportunity to search for, collect, and, if necessary, redact exempt information prior to the records being disclosed in an inspection.[105]

In addition, in lieu of providing inspection access at the local agency's office, a local agency may post the requested public record on its website and direct a member of the public to the website. If a member of the public requests a copy of the record because of the inability to access or reproduce the record from the website, the local agency must provide a copy.[106]

▶ PRACTICE TIP:

Local agencies may want to limit the number of record inspectors present at one time at a records inspection. The local agency may also want to prohibit the use of cell phones to photograph records where the inspection is of architectural or engineering plans with copyright protection.

103 Gov. Code, § 7922.525 (formerly Gov. Code, § 6253, subd. (a)).

104 *Bruce v. Gregory* (1967) 65 Cal.2d 666, 676; *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761; 64 Ops.Cal.Atty.Gen. 317 (1981).

105 See "Timing of The Response" p. 22.

106 Gov. Code, §§ 7922.530, subd. (a); 7922.545 (formerly Gov. Code, § 6253, subds. (b), (f)).

Right to Copy Public Records

Except with respect to public records exempt from disclosure by express provisions of law, a local agency, upon receipt of a request for a copy of records that reasonably describes an identifiable record or records, must make the records promptly available to any person upon payment of the appropriate fees.[107] If a copy of a record has been requested, the local agency generally must provide an exact copy except where it is "impracticable" to do so.[108] The term "impracticable" does not necessarily mean that compliance with the public records request would be inconvenient or time-consuming to the local agency. Rather, it means that the agency must provide the best or most complete copy of the requested record that is reasonably possible.[109] As with the right to inspect public records, the same rule of reasonableness applies to the right to obtain copies of those records. Thus, the local agency may impose reasonable restrictions on general requests for copies of voluminous classes of documents.[110]

The PRA does not provide for a standing or continuing request for documents that may be generated in the future.[111] However, the Brown Act provides that a person may make a request to receive a mailed copy of the agenda, or all documents constituting the agenda packet for any meeting of the legislative body. This request shall be valid for the calendar year in which it is filed.[112] A person may also make a request to receive local agency notices, such as public work contractor plan room documents,[113] and development impact fee,[114] public hearing,[115] or California Environmental Quality Act notices.[116] The local agency may impose a reasonable fee for these requests.

> ▶ **PRACTICE TIP:**
>
> Agencies may consider the use of outside copy services for oversize records or a voluminous record request, provided that the requester consents to it and pays the appropriate fees in advance. Alternatively, local agencies may consider allowing the requester to use his or her own copy service.

Form of the Request

A public records request may be made in writing or orally, in person or by phone.[117] Further, a written request may be made in paper or electronic form and may be mailed, emailed, faxed, or personally delivered. A local agency may ask, but cannot require, that the requester put an oral request in writing. In general, a written request is preferable to an oral request because it provides a record of when the request was made and what was requested, and helps the agency respond in a more timely and thorough manner.

107 See "Fees," p. 27.

108 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

109 *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 759.

110 *Id.* at p. 761; 64 Ops.Cal.Atty.Gen. 317 (1981).

111 Gov. Code, §§ 7920.530; 7920.545; 7922.525 & 7922.530, subd, (b) (formerly Gov. Code, §§ 6252, subds. (e) & (g); and 6253, subds. (a) & (b)).

112 Gov. Code, § 54954.1; see also Gov. Code, § 65092 (standing request for notice of public hearing), Cal. Code Regs., tit. 14, §§ 15072, 15082 and 15087 (standing requests for notice related to environmental documents).

113 Pub. Contract Code, § 20103.7.

114 Gov. Code, § 66016.

115 Gov. Code, § 65092.

116 Pub. Resources Code, § 21092.2.

117 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392.

> **▶ PRACTICE TIP:**
>
> Though not legally required, a local agency may find it convenient to use a written form for public records requests, particularly for those instances when a requester "drops in" to an office and asks for one or more records. The local agency cannot require the requester to use a particular form, but having the form, and even having agency staff assist with filling out the form, may help agencies better identify the information sought, follow up with the requester using the contact information provided, and provide more effective assistance to the requester in compliance with the PRA.

Content of the Request

A public records request must reasonably describe an identifiable record or records.[118] It must be focused, specific,[119] and reasonably clear, so that the local agency can decipher what record or records are being sought.[120] A request that is so open-ended that it amounts to asking for all of a department's files is not reasonable. If a request is not clear or is overly broad, the local agency has a duty to assist the requester in reformulating the request to make it clearer or less broad.[121]

A request does not need to precisely identify the record or records being sought. For example, a requester may not know the exact date of a record, its title, or author, but if the request is descriptive enough for the local agency to understand which records fall within its scope, the request is reasonable. Requests may identify writings somewhat generally by their content.[122]

No magic words need to be used to trigger the local agency's obligation to respond to a request for records. The content of the request must simply indicate that a public record is being sought. Occasionally, a requester may incorrectly refer to the federal Freedom of Information Act (FOIA) as the legal basis for the request. This does not excuse the agency from responding if the request seeks public records. A public records request does not need to state its purpose or the use to which the record will be put by the requester.[123] A requester does not have to justify or explain the reason for exercising his or her fundamental right of access.[124]

> **▶ PRACTICE TIP:**
>
> A public records request is different than a question or series of questions posed to local agency officials or employees. The PRA creates no duty to answer written or oral questions submitted by members of the public. But, if an existing and readily available record contains information that would directly answer a question, it is advisable to either answer the question or provide the record in response to the question.

118 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

119 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.

120 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165.

121 See "Assisting the Requester," p. 24.

122 *Cal. First Amend. Coalition v. Superior Court, supra*, 67 Cal.App.4th at p. 166.

123 See Gov. Code, § 7921.300 (formerly Gov. Code, § 6257.5).

124 Gov. Code, § 7921.000 (formerly Gov. Code, § 6250); Cal. Const., art. I, § 3.

A PRA request applies only to records existing at the time of the request.[125] It does not require a local agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

Timing of the Response

Inspection of Public Records

Although the law precisely defines the time for responding to a public records request for copies of records, it is less precise in defining the deadline for disclosing records. Because the PRA does not state how soon a requester seeking to inspect records must be provided access to them, it is generally assumed that the standard of promptness set forth for copies of records[126] applies to inspection. This assumption is bolstered by the provision in the PRA that states, "[n]othing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records,"[127] which again signals the importance of promptly disclosing records to the requester.

Neither the 10-day response period for responding to a request for a copy of records, nor the additional 14-day extension, may be used to delay or obstruct the inspection of public records.[128] For example, requests for commonly disclosed records that are held in a manner that allows for prompt disclosure should not be withheld because of the statutory response period.

Copies of Public Records

Time is critical in responding to a request for copies of public records. A local agency must respond promptly, but no later than 10 calendar days from receipt of the request, to notify the requester whether records will be disclosed.[129] If the request is received after business hours or on a weekend or holiday, the next business day may be considered the date of receipt. The 10-day response period starts with the first calendar day after the date of receipt.[130] If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.[131]

> **▶ PRACTICE TIP:**
>
> To ensure compliance with the 10-day deadline, it is wise for local agencies to develop a system for identifying and tracking public records requests. For example, a local agency with large departments may find it useful to have a public records request coordinator within each department. It is also very helpful to develop and implement a policy for handling public records requests in order to ensure the agency's compliance with the law.

125 Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subd. (c)).

126 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)) ["…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…"]; 88 Ops. Cal. Atty. Gen. 153 (2005); 89 Ops. Cal. Atty. Gen. 39 (2006).

127 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)).

128 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)). See also "Extending the Response Times for Copies of Public Records," p. 23.

129 Gov. Code, § 7922.535, subd. (a) (formerly Gov. Code, § 6253, subd. (c)).

130 Civ. Code, § 10.

131 Civ. Code, § 11.

> **▶ PRACTICE TIP:**
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> Watch for shorter statutory time periods for disclosure of particular public records. For example, Statements of Economic Interest (FPPC Form 700) and other campaign statements and filings required by the Political Reform Act of 1974 (Govt Code §§ 81000 et seq) are required to be made available to the public as soon as practicable, and in no event later than the second business day following receipt of the request.[132]

Extending the Response Times for Copies of Public Records

A local agency may extend the 10-day response period for copies of public records for up to 14 additional calendar days because of the need:

- To search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- To search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- To consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two city departments) with substantial interest in the request; or
- In the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.[133]

No other reasons justify an extension of time to respond to a request for copies of public records. For example, a local agency may not extend the time on the basis that it has other pressing business or that the employee most knowledgeable about the records sought is on vacation or is otherwise unavailable.

If a local agency exercises its right to extend the response time beyond the 10-day period, it must do so in writing, stating the reason or reasons for the extension, and the anticipated date of the response within the 14-day extension period.[134] The agency does not need the consent of the requester to extend the time for response.

> **▶ PRACTICE TIP:**
>
> If a local agency is having difficulty responding to a public records request within the 10-day response period and there does not appear to be grounds to extend the response period for an additional 14 days, the agency may obtain an extension by consent of the requester. Often a requester will cooperate with the agency on such matters as the timing of the response, particularly if the requester believes the agency is acting reasonably and conscientiously in processing the request. It is also advisable to document in writing any extension agreed to by the requester.

132 Gov. Code, § 81008.

133 Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subds. (c)(1)-(4)).

134 Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subd. (c)).

Timing of Disclosure

The time limit for responding to a public records request is not necessarily the same as the time within which the records must be disclosed to the requester. As a practical matter, records often are disclosed at the same time the local agency responds to the request. But in some cases, that time frame for disclosure is not feasible because of the volume of records encompassed by the request.

> **▶ PRACTICE TIP:**
>
> When faced with a voluminous public records request, a local agency has numerous options — for example, asking the requester to narrow the request, asking the requester to consent to a later deadline for responding to the request, and providing responsive records (whether redacted or not) on a "rolling" basis, rather than in one complete package. It is sometimes possible for the agency and requester to work cooperatively to streamline a public records request, with the result that the requester obtains the records or information the requester truly wants and the burdens on the agency in complying with the request are reduced. If any of these options are used, it is advisable that it is documented in writing.

Assisting the Requester

Local agencies must assist requesters who are having difficulty making a focused and effective request.[135] To the extent reasonable under the circumstances, a local agency must:

- Assist the requester in identifying records that are responsive to the request or the purpose of the request, if stated;
- Describe the information technology and physical location in which the record or records exist; and
- Provide suggestions for overcoming any practical basis for denying access to the record or records.[136]

Alternatively, the local agency may satisfy its duty to assist the requester by giving the requester an index of records.[137] Ordinarily, an inquiry into a requester's purpose in seeking access to a public record is inappropriate,[138] but such an inquiry may be proper if it will help assist the requester in making a focused request that reasonably describes an identifiable record or records.[139]

Locating Records

Local agencies must make a reasonable effort to search for and locate requested records, including by asking probing questions of city staff and consultants.[140] No bright-line test exists to determine whether an effort is reasonable. That determination will depend on the facts and circumstances surrounding each request. In general, upon the local agency's receipt of a public records request, those persons or offices that would most likely be in possession of responsive records should be consulted in an effort to locate the records. For a local agency to have a duty to locate

135 Gov. Code, § 7922.600 (formerly Gov. Code, § 6253.1); *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1417.

136 Gov. Code, § 7922.600, subds. (a)(1)-(3) (formerly Gov. Code, § 6253.1, subds. (a)(1)-(3)).

137 Gov. Code, § 7922.600, subd. (b) (formerly Gov. Code, § 6253.1, subd. 1(d)(3)).

138 See Gov. Code, § 7921.300 (formerly Gov. Code, § 6257.5).

139 Gov. Code, § 7922.600, subd. (a) (formerly Gov. Code, § 6253.1, subd. (a)).

140 *Community Youth Athletic Center v. City of National City, supra*, 220 Cal.App.4th at pp. 1417–1418; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal. App.4th 159, 166; *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616-127, 629.

records, they must qualify as public records.[141] "Thus, unless the writing is related 'to the conduct of the public's business' *and* is 'prepared, owned, used or retained by' a public entity, it is not a public record under the PRA, and its disclosure would not be governed by the PRA. No words in the statute suggest that the public entity has an obligation to obtain documents even though it has not prepared, owned, used or retained them."[142]

> **PRACTICE TIP:**
>
> To ensure compliance with the PRA, and in anticipation of court scrutiny of agency diligence in locating responsive records, agencies may want to consider adopting policies similar to those required by state and federal E-discovery statutes to prevent records destruction while a request is pending.

The right to access public records is not without limits. A local agency is not required to perform a "needle in a haystack" search to locate the record or records sought by the requester.[143] Nor is it compelled to undergo a search that will produce a "huge volume" of material in response to the request.[144] On the other hand, an agency typically will endure some burden — at times, a significant burden — in its records search. Usually that burden alone will be insufficient to justify noncompliance with the request.[145] Nevertheless, if the request imposes a substantial enough burden, an agency may decide to withhold the requested records on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure.[146]

Types of Responses

After conducting a reasonable search for requested records, a local agency has only a limited number of possible responses. If the search yielded no responsive records, the agency must inform the requester. If the agency has located a responsive record, it must decide whether to: (1) disclose the record; (2) withhold the record; or (3) disclose the record in redacted form.

> **PRACTICE TIP:**
>
> Care should be taken in deciding whether to disclose, withhold, or redact a record. It is advisable to consult with the local agency's legal counsel before making this decision, particularly when a public records request presents novel or complicated issues or implicates policy concerns or third-party rights.

If a written public records request is denied because the local agency does not have the record or has decided to withhold it, or if the requested record is disclosed in redacted form, the agency's response must be in writing and must identify by name and title each person responsible for the decision.[147]

141 See "What are Public Records?" p. 12.

142 *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399.

143 *Cal. First Amend. Coalition v. Superior Court, supra,* 67 Cal.App.4th at p. 166.

144 *Ibid.* But see *Getz v. Superior Court of El Dorado County* (2021) 72 Cal.App.5th 637 (holding that a request that required a public agency to review over 40,000 emails from specified email addresses was not overly burdensome because the emails requested were easy to locate).

145 *Ibid.*

146 *American Civil Liberties Union Foundation of North California, Inc. v. Deukmejian* (1982) 32 Cal.3d 440, 452–454; *Becerra v. Superior Court* (2020) 44. Cal. App.5th 897, 929-934. See also *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 507; 64 Ops.Cal.Atty.Gen. 317 (1981).

147 Gov. Code, § 7922.540, subds. (a)-(b) (formerly Gov. Code, §§ 6253, subd. (d), 6255, subd. (b)).

PRACTICE TIP:

A local agency should always document that it is supplying the record to the requester. The fact and sufficiency of the response may become points of dispute with the requester.

PRACTICE TIP:

Although not required, any response that denies in whole, or in part, an oral public records request should be put in writing.

If the record is withheld in its entirety or provided to the requester in redacted form, the local agency must state the legal basis under the PRA for its decision not to comply fully with the request.[148] Statements like "We don't give up those types of records" or "Our policy is to keep such records confidential" will not suffice.

Redacting Records

Some records contain information that must be disclosed, along with information that is exempt from disclosure. A local agency has a duty to provide such a record to the requester in redacted form if the nonexempt information is "reasonably segregable" from that which is exempt,[149] unless the burden of redacting the record becomes too great.[150] What is reasonably segregable will depend on the circumstances. If exempt information is inextricably intertwined with nonexempt information, the record may be withheld in its entirety.[151]

No Duty to Create a Record or a Privilege Log

A local agency has no duty to create a record that does not exist at the time of the request.[152] There is also no duty to reconstruct a record that was lawfully discarded prior to receipt of the request. However, an agency may be liable for attorney fees when a court determines the agency was not sufficiently diligent in locating requested records, even when the requested records no longer exist.[153]

The PRA does not require that a local agency create a "privilege log" or list that identifies the specific records being withheld.[154] The response only needs to identify the legal grounds for nondisclosure. If the agency creates a privilege log for its own use, however, that document may be considered a public record and may be subject to disclosure in response to a later public records request.

148 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); Gov. Code, § 7922.540, subd. (c).

149 Gov. Code, § 7922.525 (formerly Gov. Code, § 6253, subd. (a)); *American Civil Liberties Union Foundation* of North California, Inc. *v. Deukmejian*, *supra,* 32 Cal.3d at p. 458.

150 *American Civil Liberties Union Foundation* of North California, Inc. *v. Deukmejian, supra*, 32 Cal.3d at p. 452–454; *Becerra v. Superior Court, supra*, 44. Cal. App.5th at p. 939-934.

151 *Ibid.*

152 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, §6252, subd. (e)); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; *City of San Jose v. Superior Court, supra*, 2 Cal.5th at pp. 616–627, 629; *Sander v. Superior Court* (2018) 26 Cal.App.5th 651. See Chapter 6 concerning duties and obligations with respect to electronic records.

153 *Community Youth Athletic Center v. National City*, supra, 220 Cal.App.4th at p. 1447. See "Attorney Fees and Costs," p. 61.

154 *Haynie v. Superior Court, supra*, 26 Cal.4th, at p. 1075.

> **PRACTICE TIP:**
>
> To ensure compliance with the PRA or in anticipation of court scrutiny of the agency's due diligence, the local agency may wish to maintain a separate file for copies of records that have been withheld and those produced (including redacted versions).

Fees

The public records process is in many respects cost-free to the requester. The local agency may only charge a fee for the direct cost of duplicating a record when the requester is seeking a copy,[155] or it may charge a statutory fee, if applicable.[156] A local agency may require payment in advance, before providing the requested copies;[157] however, no payment can be required merely to look at a record where copies are not sought.

Direct cost of duplication is the cost of running the copy machine, and conceivably the expense of the person operating it.[158] "Direct cost" does not include the ancillary tasks necessarily associated with the retrieval, inspection, and handling of the file from which the copy is extracted.[159] For example, if concern for the security of records requires that an agency employee sit with the requester during the inspection, or if a record must be redacted before it can be inspected, the agency may not bill the requester for that expenditure of staff time.

> **PRACTICE TIP:**
>
> The direct cost of duplication charged for a PRA request should be supported by a fee study adopted by a local agency resolution.

Although permitted to charge a fee for duplication costs, a local agency may choose to reduce or waive that fee.[160] For example, the agency might waive the fee in a particular case because the requester is indigent; or it might generally choose to waive fees below a certain dollar threshold because the administrative costs of collecting the fee would exceed the revenue to be collected. An agency may also set a customary copying fee for all requests that is lower than the amount of actual duplication costs.

> **PRACTICE TIP:**
>
> If a local agency selectively waives or reduces the duplication fee, it should apply standards for waiver or reduction with consistency to avoid charges of favoritism or discrimination toward particular requesters.

155 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

156 Gov. Code, § 7922.430, subd. (a) (formerly Gov. Code, § 6253, subd. (b)); 85 Ops.Cal.Atty.Gen. 225 (2002); see, e.g., Gov. Code, § 81008.

157 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

158 *North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144, 148.

159 *Ibid.*; *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 492.

160 Gov. Code, § 7922.505 (formerly Gov. Code, § 6253, subd. (e)); *North County Parents Organization v. Dept. of Education, supra*, 23 Cal.App.4th at p. 148.

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy and does not include cost of redaction.[161] For example, a city cannot charge requesters for time city employees spent searching for, reviewing, and editing videos to redact exempt, but otherwise producible, data. However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or if production of the record would require data compilation, extraction, or programming. Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.

PRACTICE TIP:

If there is a request for public records pursuant to Government Code section 7922.575 requiring "data compilation, extraction, or programming to produce the record" the local agency should ask the requester to pay the fees in advance, before the "data compilation, extraction, or programming" is actually done.

Waiver

Generally, whenever a local agency discloses an otherwise exempt public record to any member of the public, the disclosure constitutes a waiver of most of the exemptions contained in the PRA for all future requests for the same information. The waiver provision in Government Code section 7921.505 applies to an intentional disclosure of privileged documents, and a local agency's inadvertent release of attorney-client documents does not waive such privilege.[162] There are, however, a number of statutory exceptions to the waiver provisions, including, among others, disclosures made through discovery or other legal proceedings, and disclosures made to another governmental agency that agrees to treat the disclosed material as confidential.

161 *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 492.

162 *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1183; *Newark School District v. Superior Court* (2015) 245 Cal.App.4th 887, 897.

Chapter 4

Specific Document Types, Categories, and Exemptions from Disclosure

Overview of Exemptions

This chapter discusses how to address requests for certain specific types and categories of commonly requested records and many of the most frequently raised exemptions from disclosure that may, or in some cases, must be asserted by local agencies.

Transparent and accessible government is the foundational objective of the PRA. This recently constitutionalized right of access to the writings of local agencies and officials was declared by the Legislature in 1968 to be a "fundamental and necessary right."[163] While this right of access is not absolute, it must be construed broadly.[164] The PRA contains over 75 express exemptions, many of which are discussed below, including one for records that are otherwise exempt from disclosure by state or federal statutes,[165] and a balancing test, known as the "public interest" or "catchall" provision. This "catchall" provision allows local agencies to justify withholding any record by demonstrating that on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure.[166]

When local agencies claim an exemption or prohibition to disclosure of all or a part of a record, they must identify the specific exemption to disclosure in the response.[167] Where a record contains some information that is subject to an

163 See Gov. Code, § 7921.000 (formerly Gov. Code, § 6250).

164 Cal. Const., art. I, § 3(b)(2); *City of San Jose v. Superior Court,* 2 Cal.5th 608, 617.

165 Gov. Code, § 7927.705 (formerly Gov. Code § 6254(k)); *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67.

166 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); *Long Beach Police Officers Assn. v. City of Long Beach, supra,* 59 Cal.4th at p. 67. See also "Public Interest Exemption," p. 63.

167 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); *Long Beach Police Officers Assn. v. City of Long Beach*, *supra*, 59 Cal.4th at p. 67.

exemption and other information that is not, the local agency may redact the information that is exempt (identifying the exemption), but must otherwise still produce the record. Unless a statutory exemption applies, the public is entitled to access or a copy.[168]

> **PRACTICE TIP:**
>
> When evaluating a record to determine whether it falls within an exemption in the PRA, do not overlook exemptions and even prohibitions to disclosure that are contained in other state and federal statutes, including, for example, evidentiary privileges, medical privacy laws, police officer personnel record privileges, official information, information technology or infrastructure security systems, etc. Many of these other statutory exemptions or prohibitions are also discussed below.

Types of Records and Specific Exemptions

Architectural and Official Building Plans

The PRA recognizes exemptions to the disclosure of a record "which is exempted or prohibited [from disclosure] pursuant to federal or state law ...."[169] Under this rule, architectural and official building plans may be exempt from disclosure, because: (1) architectural plans submitted by third parties to local agencies may qualify for federal copyright protections;[170] (2) local agencies may claim a copyright in many of their own records; or (3) state laws address inspection and duplication of building plans by members of the public.[171]

"Architectural work," defined under federal law as the "design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings,"[172] is considered an "original work of authorship,"[173] which has automatic federal copyright protection.[174] Architectural plans may be inspected, but cannot be copied without the permission of the owner.[175]

> **PRACTICE TIP:**
>
> Some requesters will cite the "fair use of copyrighted materials" doctrine as giving them the right to copy architectural plans.[176] The fair use rule is a defense to a copyright infringement action only and not a legal entitlement to obtain copyrighted materials.[177]

168 *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329.

169 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

170 17 U.S.C. § 17.

171 Health & Saf. Code, § 19851.

172 17 U.S.C. § 101.

173 17 U.S.C. § 102(A)(8).

174 17 U.S.C. §§ 102(A)(8), 106.

175 17 U.S.C. § 106.

176 17 U.S.C. § 107.

177 See *Harper and Row Publishers, Inc. v. Nation Enterprises* (1985) 471 U.S. 539, 561 (discussing "fair use" defense).

The official copy of building plans maintained by a local agency's building department may be inspected, but cannot be copied without the local agency first requesting the written permission of the licensed or registered professional who signed the document and the original or current property owner.[178] A request made by the building department via registered or certified mail for written permission from the professional must give the professional at least 30 days to respond and be accompanied by a statutorily prescribed affidavit signed by the person requesting copies, attesting that the copy of the plans shall only be used for the maintenance, operation, and use of the building, that the drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record, and that a licensed architect who signs and stamps plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent unauthorized changes to or uses of those plans.[179] After receiving this required information, the professional cannot withhold written permission to make copies of the plans.[180] These statutory requirements do not prohibit duplication of reduced copies of plans that have been distributed to local agency decision-making bodies as part of the agenda materials for a public meeting.[181]

The California Attorney General has determined that interim grading documents, including geology, compaction, and soils reports, are public records that are not exempt from disclosure.[182]

Attorney-Client Communications and Attorney Work Product

The PRA specifically exempts from disclosure "records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, the provisions of the Evidence Code relating to privilege."[183] The PRA's exemptions protect attorney-client privileged communications and attorney work product, as well as, more broadly, other work product prepared for use in pending litigation or claims.[184]

> **PRACTICE TIP:**
>
> Penal Code section 832.7 contains specific rules relating to the application of attorney-client privilege, and disclosure of attorney bills and retainer agreements relating to peace officer personnel records.[185]

Attorney-Client Privilege

The attorney-client privilege protects from disclosure the entirety of confidential communications between attorney and client, as well as among the attorneys within a firm or in-house legal department representing such client, including factual and other information, not in itself privileged outside of attorney-client communications.[186] The fundamental purpose of the attorney-client privilege is preservation of the confidential relationship between attorney and client. It is not necessary to demonstrate that prejudice would result from disclosure of attorney-client

178 Health & Saf. Code, § 19851.

179 *Ibid.*

180 *Ibid.*

181 Gov. Code, § 54957.5.

182 89 Ops.Cal.Atty.Gen. 39 (2006).

183 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

184 *Fairley v. Superior Court, supra*, 66 Cal.App.4th 1414, 1420–1422. See also "Official Information Privilege," p. 48.

185 See "Peace Officer Personnel Records," p. 53.

186 *Costco Wholesale Corporation v. Superior Court* (2009) 47 Cal.4th 725, 733; *Fireman's Fund Insurance Company v. Superior Court* (2011) 196 Cal.App.4th 1263, 1272–1275; *Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 49–52.

communications to prevent such disclosure.[187] When the party claiming the privilege shows the dominant purpose of the relationship between the parties to the communication was one of attorney and client, the communication is protected by the privilege.[188] Unlike the exemption for pending litigation, attorney-client privileged information is still protected from disclosure even after litigation is concluded.[189] But note, the attorney-client privilege will likely not protect communication between a public employee and his or her personal attorney if that communication occurs using a public entity's computer system and the public entity has a computer policy that indicates the computers are intended for the public entity's business and are subject to monitoring by the employer.[190]

The attorney plaintiff in a wrongful termination suit and the defendant insurer may reveal privileged third-party attorney-client communications to their own attorneys to the extent necessary for the litigation, but may not publicly disclose such communications.[191]

Attorney Work Product

Any writing that reflects an attorney's impressions, conclusions, opinions, legal research, or theories is not discoverable under any circumstances and is thus exempt from disclosure under the PRA. There is also a qualified privilege against disclosure of materials (e.g., witness statements, other investigative materials) developed by an attorney in preparing a case for trial as thoroughly as possible, with a degree of privacy necessary to uncover and investigate both favorable and unfavorable aspects of a case.[192]

Common Interest Doctrine

The common interest doctrine may also protect communications with third parties from disclosure where the communication is protected by the attorney-client privilege or attorney-work-product doctrine, and maintaining the confidentiality of the communication is necessary to accomplish the purpose for which legal advice was sought. The common interest doctrine is not an independent privilege; rather, it is a nonwaiver doctrine that may be used by plaintiffs or defendants alike.[193] For the common interest doctrine to attach, the parties to the shared communication must have a reasonable expectation that the information disclosed will remain confidential.[194] Further, the parties must have a common interest in a matter of joint concern. In other words, they must have a common interest in securing legal advice related to the same matter, and the communication must be made to advance their shared interest in securing legal advice on that common matter.[195]

187 *Costco Wholesale Corporation v. Superior Court, supra*, 47 Cal.4th at p. 740-741.

188 *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1032; *Clark v. Superior Court, supra*, 196 Cal.App.4th at p. 51.

189 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371–373. See "Pending Litigation or Claims," p. 49.

190 *Holmes v. Petrovich Development Co. LLC* (2011) 191 Cal.App.4th 1047, 1071–1072.

191 *Chubb & Son v. Superior Court* (2014) 228 Cal.App.4th 1094, 1106–1109.

192 Code Civ. Proc., § 2018.030, subds. (a) & (b); Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

193 *OXY Resources LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 889.

194 *Id.* at p. 891.

195 Compare *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 914–922 (common interest doctrine inapplicable to communications between developer and city prior to approval of application because, pre-project approval, parties lacked a common interest) with *California Oak Foundation v. County of Tehama* (2009) 174 Cal.App.4th 1217, 1222–1223 (sharing of privileged documents prepared by county's outside law firm regarding CEQA compliance with project applicant was within common interest doctrine).

Attorney Bills and Retainer Agreements

Attorney billing invoices reflecting work in active and ongoing litigation are exempt from disclosure under the attorney-client privilege or attorney-work-product doctrine.[196] Once a matter is concluded, portions of attorney invoices reflecting fee totals must be disclosed unless such totals reveal anything about the legal consultation, such as insight into litigation strategy, the substance of the legal consultation, or clues about legal strategy.[197]

Retainer agreements between a local agency and its attorneys may constitute confidential communications that fall within the attorney-client privilege.[198] A local agency's governing body may waive the privilege and elect to produce the agreements.[199]

PRACTICE TIP:

Some agencies simplify redaction of attorney bills and production of non-exempt bill information in response to requests by requiring that non-exempt portions of attorney bills, such as the name of the matter, the invoice amount, and date, be contained in separate documents from privileged bill text.

CEQA Proceedings

Increasingly, potential litigants have been submitting public records requests as a prelude to or during preparation of the administrative record for challenges to the adequacy of an agency's California Environmental Quality Act (CEQA) process or certification of CEQA documents. While there are no specific PRA provisions directly addressing CEQA proceedings, these requests can present multiple challenges as they may seek voluminous amounts of records, such as email communications between staff and consultants, or confidential and privileged documents.

PRACTICE TIP:

A request to prepare an administrative record for a CEQA challenge does not excuse or justify ignoring or delaying responses to a CEQA-related PRA request. A failure to properly or fully respond to the PRA request can lead to claims of violations of the PRA and a demand for attorneys' fees being included in a CEQA lawsuit. Local agencies should, therefore, exercise the same due diligence when responding to CEQA-related PRA requests as they do with any other type of PRA request. As with any litigation or potential litigation, local agencies should also consider invoking internal litigation holds and evidence preservation practices early on in a contentious CEQA process.[200]

Two particularly challenging issues that arise with CEQA-related PRA requests are whether and to what extent a subcontractor's files are public records subject to disclosure, and whether the deliberative process privilege or public interest exemption apply to the requested documents.

196 *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 297; *County of Los Angeles Bd. of Supervisors v. Superior Court* (2017) 12 Cal. App.5th 1264, 1273-1274.

197 *County of Los Angeles Bd. of Supervisors v. Superior Court, supra*, 12 Cal.App.5th at pp. 1274-1275. See "Pending Litigation or Claims," p. 49.

198 Bus. & Prof. Code, § 6149 (a written fee contract shall be deemed to be a confidential communication within the meaning of section 6068(e) of the Business & Professions Code and section 952 of the Evidence Code); Evid. Code, § 952 ("Confidential communication between client and lawyer"); Evid. Code, § 954 (attorney-client privilege).

199 Evid. Code, § 912. See also Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5) and "Waiver," p. 28.

200 See *Golden Door Properties, LLC, et al. v. Superior Court* (2020) 53 Cal.App.5th 733.

In determining whether a subcontractor's files are public records in the actual or constructive possession of the local agency, the court will look to the consultant's contract to determine the extent to which, if any, the local agency had control over the selection of subcontractors, and how they performed services required by the primary consultant.[201]

> **PRACTICE TIP:**
>
> Examine your contracts with consultants and clearly articulate who owns their work product, and that of their subcontractors.

Requests for materials that implicate the deliberative process privilege or public interest exemption are commonly made in CEQA-related PRA requests. While it may seem obvious that local agency staff and their consultants desire and in fact need to engage in candid dialogue about a project and the approaches to be taken, when invoking the deliberative process privilege to protect such communications from disclosure the local agency must clearly articulate why the privilege applies by more than a simple statement that it helps the process.[202] Likewise, when invoking the public interest exemption to protect documents from disclosure, local agencies must do more than simply state the conclusion that the public's interest in nondisclosure is clearly outweighed by the public interest in disclosure.[203]

> **PRACTICE TIP:**
>
> When evaluating whether the deliberative process privilege applies to documents covered by a PRA request during a pre-litigation CEQA process, keep in mind the close correlation between the drafts exemption, discussed below, and the deliberative process privilege.

Code Enforcement Records

Local agencies may pursue code enforcement through administrative or criminal proceedings, or a combination of both. Records of code enforcement cases for which criminal sanctions are sought may be subject to the same disclosure rules as police and other law enforcement records, including the rules for investigatory records and files, as long as there is a concrete and definite prospect of criminal enforcement.[204] Records of code enforcement cases being prosecuted administratively do not qualify as law enforcement records.[205] However, some administrative code enforcement information, such as names and contact information of complainants, may be exempt from disclosure under the official information privilege, the identity of informant privilege, or the public interest exemption.[206]

Deliberative Process Privilege

The deliberative process privilege is derived from the public interest exemption, which provides that a local agency may withhold a public record if it can demonstrate that "on the facts of a particular case the public interest served

201 *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal.App.4th 697, 710–712.

202 *See* "Deliberative Process Privilege" p. 34.

203 *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 307. See also, "Public Interest Exemption," p. 63.

204 Gov. Code, §§ 7923.600–7923.625 (formerly Gov. Code, § 6254, subd. (f)); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068–1069; *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783–784. See "Law Enforcement Records," p. 38.

205 *Haynie v. Superior Court, supra,* 26 Cal.4th 1061; *State of California ex rel. Division of Industrial Safety v. Superior Court, supra*, 43 Cal.App.3d at pp. 783–784.

206 City of *San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008. See "Official Information Privilege," p. 48, "Identity of Informants," p. 37, and "Public Interest Exemption," p. 63.

by not making the record public clearly outweighs the public interest served by disclosure of the record."[207] The deliberative process privilege was intended to address concerns that frank discussion of legal or policy matters might be inhibited if subject to public scrutiny, and to support the concept that access to a broad array of opinions and the freedom to seek all points of view, to exchange ideas, and to discuss policies in confidence are essential to effective governance in a representative democracy. Therefore, California courts invoke the privilege to protect communications to decisionmakers before a decision is made.[208]

In evaluating whether the deliberative process privilege applies, the court will still perform the balancing test prescribed by the public interest exemption.[209] In doing so, courts focus "less on the nature of the records sought and more on the effect of the records' release."[210] Therefore, the key question in every deliberative process privilege case is "whether the disclosure of materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions."[211] "Accordingly, the ... courts have uniformly drawn a distinction between predecisional communications, which are privileged [citations]; and communications made after the decision and designed to explain it, which are not."[212] Protecting the predecisional deliberative process gives the decision-maker "the freedom 'to think out loud,' which enables him [or her] to test ideas and debate policy and personalities uninhibited by the danger that his [or her] tentative but rejected thoughts will become subjects of public discussion. Usually, the information is sought with respect to past decisions; the need is even stronger if the demand comes while policy is still being developed."[213]

Courts acknowledge that even a purely factual document would be exempt from public scrutiny if it is "actually ... related to the process by which policies are formulated" or "inextricably intertwined" with "policy-making processes."[214] For example, the California Supreme Court applied the deliberative process privilege in determining that the Governor's appointment calendars and schedules were exempt from disclosure under the PRA even though the information in the appointment calendars and schedules was based on fact.[215] The Court reasoned that such disclosure could inhibit private meetings and chill the flow of information to the executive office.[216]

Drafts

The PRA exempts from disclosure "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure."[217] The "drafts" exemption provides a measure of privacy for writings concerning pending local agency action. The exemption was adapted from the FOIA, which exempts from

207 *Times Mirror Company v. Superior Court* (1991) 53 Cal.3d 1325, 1338; Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); Evid. Code §1040. See also, *Labor and Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12.

208 *Ibid.*; 5 U.S.C. § 552(b)(5). In some cases, pre-decisional communications may also be subject to the official information privilege found in Evidence Code section 1040. See "Official Information Privilege," p. 48.

209 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172.

210 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at pp. 1338, 1342.

211 *Id.* at p. 1342, citing *Dudman Communications v. Dept. of Air Force* (D.C.Cir.1987) 815 F.2d 1565, 1568.

212 *NLRB v. Sears, Roebuck & Co.* (1975) 421 U.S. 132, 151–152. See also *Times Mirror v. Superior Court (State of California)* (1991) 53 Cal.3d 1325, 1341.

213 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at p.1341, citing Cox, Executive Privilege (1974) 122 U Pa L Rev 1383, 1410.

214 *Jordan v. United States Dept. of Justice* (D.C.Cir.1978) 591 F.2d 753, 774; *Ryan v. Department of Justice* (D.C.Cir.1980) 617 F.2d 781, 790; *Soucie v. David* (D.C.Cir.1971) 448 F.2d 1067, 1078.

215 *Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at p. 1338.

216 *Ibid.*

217 Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a)).

disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."[218] The FOIA "memorandums" exemption is based on the policy of protecting the decision- making processes of government agencies, and in particular the frank discussion of legal or policy matters that might be inhibited if subjected to public scrutiny.[219]

The "drafts" exemption in the PRA has essentially the same purpose as the "memorandums" exemption in the FOIA. The key question under the FOIA test is whether the disclosure of materials would expose a local agency's decision-making process in such a way as to discourage candid discussion within the local agency and thereby undermine the local agency's ability to perform its functions.[220] To qualify for the "drafts" exemption the record must be a preliminary draft, note, or memorandum; that is not retained by the local agency in the ordinary course of business; and the public interest in withholding the record must clearly outweigh the public interest in disclosure.[221]

The courts have observed that preliminary materials that are not customarily discarded or that have not in fact been discarded pursuant to policy or custom must be disclosed.[222] Records that are normally retained do not qualify for the exemption. This is in keeping with the purpose of the FOIA "memorandums" exemption of prohibiting the "secret law" that would result from confidential memos retained by local agencies to guide their decision-making.

PRACTICE TIP:

By adopting written policies or developing consistent practices of discarding preliminary deliberative writings, local agencies may facilitate candid internal policy debate. Consider including in such policies when a document should be considered to be "discarded," which might prevent the need to search through bins of documents segregated and approved for destruction under the policies, yet awaiting appropriate shredding and disposal. Such policies and practices may exempt from disclosure even preliminary drafts that have not yet been discarded, so long as the drafts are not maintained by the local agency in the ordinary course of business, and the public interest in nondisclosure clearly outweighs the public interest in disclosure.

Elections

Voter Registration Information

Voter registration information, including the home street address, telephone number, email address, precinct number, or other number specified by the Secretary of State for voter registration purposes is confidential and cannot be disclosed except as specified in section 2194 of the Elections Code.[223] Similarly, the signature of the voter shown on the voter registration card is confidential and may not be disclosed to any person, except as provided in the Elections Code.[224] Voter registration information may be provided to any candidate for federal, state, or local office; to any committee for or against an initiative or referendum measure for which legal publication is made; and to any person

218 5 U.S.C. § 552, subd. (b)(5).

219 *Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d 1325, 1339–1340.

220 *Id.* at p. 1342.

221 *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704, 711–712; Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a)).

222 *Citizens for a Better Environment v. Department of Food and Agriculture*, *supra,* 171 Cal.App.3d at p. 714.

223 Gov. Code, § 7924.000, subd. (a)(1) (formerly Gov. Code, § 6254.4, subd. (a)).

224 Gov. Code, § 7924.000, subd. (c) (formerly Gov. Code, § 6254.4, subd. (d)).

for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.[225]

A California Driver's License, California ID card, or other unique identifier used by the State of California for purposes of voter identification shown on the affidavit of voter registration of a registered voter or added to voter registration records to comply with the requirements of the federal Help America Vote Act of 2002, is confidential and may not be disclosed to any person.[226]

When a person's vote is challenged, the voter's home address or signature may be released to the challenger, elections officials, and other persons as necessary to make, defend against, or adjudicate a challenge.[227]

A person may view the signature of a voter to determine whether the signature matches a signature on an affidavit of registration or a petition. The signature cannot be copied, reproduced, or photographed in any way.[228]

Information or data compiled by local agency officers or employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets is not a disclosable public record and may not be provided to any person other than those local agency officers or employees who are responsible for receiving and processing those requests.[229]

Initiative, Recall, and Referendum Petitions

Nomination documents and signatures filed in lieu of filing fee petitions may be inspected, but not copied or distributed.[230] Similarly, any petition to which a voter has affixed his or her signature for a statewide, county, city, or district initiative, referendum, recall, or matters submitted under the Elections Code, is not a disclosable public record and is not open to inspection except by the local agency officers or employees whose duty it is to receive, examine, or preserve the petitions.[231] This prohibition extends to all memoranda prepared by county and city elections officials in the examination of the petitions indicating which voters have signed particular petitions.[232]

If a petition is found to be insufficient, the proponents and their representatives may inspect the memoranda of insufficiency to determine which signatures were disqualified and the reasons for the disqualification.[233]

Identity of Informants

A local agency also has a privilege to refuse to disclose and to prevent another from disclosing the identity of a person who has furnished information in confidence to a law enforcement officer or representative of a local agency charged with administration or enforcement of the law alleged to be violated.[234] This privilege applies where the information purports to disclose a violation of a federal, state, or another public entity's law, and where the public's interest in

225 Elec. Code, § 2194.

226 Elec. Code, § 2194, subd. (b).

227 Elec. Code, § 2194, subd. (c)(1).

228 Elec. Code, § 2194, subd. (c)(2).

229 Gov. Code, § 7924.005 (formerly Gov. Code, § 6253.6).

230 Elec. Code, § 17100.

231 Elec. Code, §§ 17200, 17400.

232 Gov. Code, § 7924.110, subd. (a)(5) (formerly Gov. Code, § 6253.5, subd. (a)).

233 Gov. Code, § 7924.110, subd. (b)(2) (formerly Gov. Code, § 6253.5, subd. (a)).

234 Evid. Code, § 1041.

protecting an informant's identity outweighs the necessity for disclosure.[235] This privilege extends to disclosure of the contents of the informant's communication if the disclosure would tend to disclose the identity of the informant.[236]

Information Technology Systems Security Records

An information security record is exempt from disclosure if, on the facts of a particular case, disclosure would reveal vulnerabilities to attack, or would otherwise increase the potential for an attack on a local agency's information technology system.[237]

Disclosure of records stored within a local agency's information technology system that are not otherwise exempt under the law do not fall within this exemption.[238]

Law Enforcement Records

Overview

As an exemption to the general rule of disclosure under the PRA, law enforcement records are generally exempt from disclosure to the public.[239] That is, in most instances, the actual investigation files and records are themselves exempt from disclosure, but the PRA does require local agencies to disclose certain information derived from those files and records.[240] For example, the names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (e.g., if there is a specific threat to an officer or an officer is working undercover).[241]

The type of information that must be disclosed differs depending on whether it relates to, for example, calls to the police department for assistance, the identity of an arrestee, information relating to a traffic accident, or certain types of crimes, including car theft, burglary, or arson. The identities of victims of certain types of crimes, including minors and victims of sexual assault, are required to be withheld if requested by the victim or the victim's guardian, if the victim is a minor.[242] Those portions of any file that reflect the analysis and conclusions of the investigating officers may also be withheld.[243] Certain information that may be required to be released may be withheld where the disclosure would endanger a witness or interfere with the successful completion of the investigation. These exemptions extend indefinitely, even after the investigation is closed.[244]

Release practices vary by local agency. Some local agencies provide a written summary of information being disclosed, some release only specific information upon request, while others release reports with certain matters redacted. Other local agencies release reports upon request with no redactions except as mandated by statute. Some local agencies also release 911 tapes and booking photos, although this is not required under the PRA.[245]

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235 Evid. Code, § 1041; *People v. Navarro* (2006) 138 Cal.App.4th 146, 164.

236 *People v. Hobbs* (1994) 7 Cal.4th 948, 961–962.

237 Gov. Code, § 7929.210, subd. (a) (formerly Gov. Code, § 6254.19).

238 Gov. Code, § 7929.210, subd. (b) (formerly Gov. Code, § 6254.19). See also Gov. Code, § 7929.200 (formerly Gov. Code, § 6254, subd. (aa)).

239 Gov. Code, § 7923.600, subd. (a) (formerly Gov. Code § 6254, subd. (f)); *Williams v. Superior Court* (1993) 5 Cal.4th 337, 348.

240 *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068; 65 Ops.Cal.Atty.Gen. 563 (1982).

241 *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 63–68.

242 Gov. Code, § 7923.615, subd. (b) (formerly § 6254, subd. (f)(2)).

243 *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174.

244 *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1052; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 361–362; *Office of the Inspector General v. Superior Court* (2010) 189 Cal.App.4th 695 (Office of the Attorney General has discretion to determine which investigatory records are subject to disclosure in connection with its investigations, and investigatory records in that context may include some documents that were not prepared as part of, but became subsequently relevant to, the investigation).

245 *Haynie v. Superior Court, supra*, 26 Cal.4th 1061 (911 tapes); 86 Ops.Cal.Atty.Gen. 132 (2003) (booking photos).

PRACTICE TIP:

If it is your local agency's policy to release police reports upon request, it is helpful to establish an internal process to control the release of the identity of minors or victims of certain types of crimes, or to ensure that releasing the report would not endanger the safety of a person involved in an investigation or endanger the completion of the investigation.

Recent changes to the PRA have made video or audio recordings that relate to "critical incidents" available to the public within specified timeframes.[246] A video or audio recording relates to a critical incident if it depicts an incident involving (1) the discharge of a firearm at a person by a peace officer or custodial officer or (2) an incident in which the use of force by a peace officer or custodial officers against a person resulted in death or in great bodily injury. [247]

Recent changes to the Penal Code have also made records related to certain types of police incidents and police misconduct available to the public, notwithstanding the law enforcement record exemption in the PRA.[248]

PRACTICE TIP:

The term "great bodily injury" is not defined by the recent amendments to the Government Code or the Penal Code referenced above. The Penal Code does contain a definition of great bodily injury (GBI) in the context of an enhancement statute for felonies not having bodily harm as an element. Penal Code section 12022.7 defines GBI as "a significant or substantial physical injury." Case law interpreting this section may be helpful in determining what constitutes GBI, and therefore what records are subject to release, depending on the particular facts of an injury.

State law also requires police agencies to report annually to the California Department of Justice use of force incidents that caused serious bodily injury to a civilian, among other incidents. This report may be a helpful tool in determining which incidents are subject to release for purposes of the Public Records Act.

Exempt Records

The PRA generally exempts most law enforcement records from disclosure, including, among others:

- Complaints to or investigations conducted by a local or state police agency;
- Records of intelligence information or security procedures of a local or state police agency;
- Any investigatory or security files compiled by any other local or state police agency;
- Customer lists provided to a local police agency by an alarm or security company; and
- Any investigatory or security files compiled by any state or local agency for correctional, law enforcement, or licensing purposes.[249]

246 Gov. Code, § 7923.625 (formerly § 6254, subd. (f)(4)).

247 Gov. Code, § 7923.625, subd. (e) (formerly § 6254, subd. (f)(4)(C)).

248 See "Peace Officer Personnel Records," p. 53.

249 Gov. Code, § 7923.600 subd. (a) (formerly § 6254, subd. (f)); *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1276 (coroner and autopsy reports).

> **▶ PRACTICE TIP:**
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> Many departments that choose not to release entire reports develop a form that can be filled out with the requisite public information.

The burden of proof is on the agency asserting the exemption and the exemptions should be narrowly construed.[250]

In addition to the above categories, and notwithstanding the changes to the PRA and Penal Code making additional police records available to the public, the public interest catchall exemption may still apply to police records, 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.[251]

Information that Must be Disclosed

Under the Public Records Act, there are four general categories of information contained in law enforcement investigatory files that must be disclosed: information which must be disclosed to victims, their authorized representatives and insurance carriers, information relating to arrestees, information relating to complaints or requests for assistance, and audio or video recordings that relate to critical incidents.

Disclosure to Victims, Authorized Representatives, and Insurance Carriers

Except where disclosure would endanger the successful completion of an investigation or a related investigation, or endanger the safety of a witness, certain information relating to specific listed crimes must be disclosed upon request to:

- A victim;
- The victim's authorized representative;
- An insurance carrier against which a claim has been or might be made; or
- Any person suffering bodily injury, or property damage or loss.

The type of crimes listed in this subsection to which this requirement applies include arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime defined by statute.[252]

The type of information that must be disclosed under this section (except where it endangers safety of witnesses or the investigation itself) includes:

- Name and address of persons involved in or witnesses to incident (other than confidential informants);
- Description of property involved;
- Date, time, and location of incident;
- All diagrams;
- Statements of parties to incident; and
- Statements of all witnesses (other than confidential informants).[253]

250 *Ventura County Deputy Sheriffs' Assn. v. County of Ventura* (2021) 61 Cal.App.5th 585, 592.

251 Becerra *v. Superior Court* (2020) 44 Cal.App.5th 897, 923-929. See "Public Interest Exception," p. 63 for a discussion of this balancing test.

252 Gov. Code, § 7923.605, subd. (a) (formerly § 6254, subd. (f)).

253 Gov. Code, § 7923.605, subd. (a) (formerly § 6254, subd. (f)); *Buckheit v. Dennis* (ND Cal. 2012) 2012 U.S. Dist. LEXIS 49062 (noting that Government Code section 6254, subd. (f) requires disclosure of certain information to a victim. Suspects are not entitled to that same information).

Local agencies may not require a victim or a victim's authorized representative to show proof of the victim's legal presence in the United States to obtain the information required to be disclosed to victims.[254] However, if a local agency does require identification for a victim or authorized representative to obtain information disclosable to victims, the local agency must, at a minimum, accept a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship, or a current Matricula Consular card.[255]

The Vehicle Code addresses the release of traffic accident information. A law enforcement agency to whom an accident was reported is required to disclose the entire contents of a traffic accident report to persons who have a "proper interest" in the information, including, but not limited to, the driver(s) involved in the accident, or the authorized representative, guardian, or conservator of the driver(s) involved; the parent of a minor driver; any named injured person; the owners of vehicles or property damaged by the accident; persons who may incur liability as a result of the accident; and any attorney who declares under penalty of perjury that he or she represents any of the persons described above.[256] The local enforcement agency may recover the actual cost of providing the information.

Information Regarding Arrestees

The PRA mandates that the following information be released pertaining to every individual arrested by the local law enforcement agency, except where releasing the information would endanger the safety of persons involved in an investigation or endanger the successful completion of the investigation or a related investigation:

- Full name and occupation of the arrestee;
- Physical description including date of birth, color of eyes and hair, sex, height, and weight;
- Time, date, and location of arrest;
- Time and date of booking;
- Factual circumstances surrounding arrest;
- Amount of bail set;
- Time and manner of release or location where arrestee is being held; and
- All charges the arrestee is being held on, including outstanding warrants and parole or probation holds.[257]

As previously stated, a PRA request applies only to records existing at the time of the request.[258] It does not require a local agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

> **▶ PRACTICE TIP:**
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> Most police departments have some form of a daily desk or press log that contains all or most of this information.

254 Gov. Code, § 7923.655 subd. (a) (formerly § 6254.30).

255 Gov. Code, § 7923.655 subd. (b) (formerly § 6254.30).

256 Veh. Code, § 20012.

257 Gov. Code, § 7923.610 subd. (a)-(i) (formerly § 6254, subd. (f)(1)).

258 Gov. Code, § 7922.535 subd. (a) (formerly § 6253, subd. (c)).

Local agencies are only required to disclose arrestee information pertaining to "contemporaneous" police activity.[259] The legislature has not defined the term "contemporaneous" in the context of arrest logs, but the purpose of the disclosure requirement is "*only* to prevent secret arrests and provide basic law enforcement information to the press."[260] For example, a request for 11 or 12 month old arrest information would not serve the purpose of preventing clandestine police activity, therefore those records are exempt from disclosure.[261]

Complaints or Requests for Assistance

The Penal Code provides that except as otherwise required by the criminal discovery provisions, no law enforcement officer or employee of a law enforcement agency may disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim of or witness to the alleged offense.[262]

Subject to the restrictions imposed by the Penal Code, the following information must be disclosed relative to complaints or requests for assistance received by the law enforcement agency:

- 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;[263]
- To the extent the crime, alleged or committed, or any other incident is recorded, the time, date, and location of occurrence, and the time and date of the report;[264]
- The factual circumstances surrounding crime/incident;[265]
- A general description of injuries, property, or weapons involved;[266] and
- The names and ages of victims, except the names of victims of certain listed crimes[267] may be withheld upon request of the victim or parent of a minor victim.[268]

Requests for Journalistic or Scholarly Purposes

Where a request states, under penalty of perjury, that (1) it is made for a scholarly, journalistic, political, or governmental purpose, or for an investigative purpose by a licensed private investigator, and (2) it will not be used directly or indirectly, or furnished to another, to sell a product or service, the PRA requires the disclosure of the name and address of every individual arrested by the local agency and the current address of the victim of a crime, except for specified crimes.[269]

259 Kinney *v. Superior Court* (2022) 77 Cal.App.5th 168.

260 *Id.* at pp. 180-181

261 *Id.* at p. 181

262 Pen. Code, § 841.5, subd. (a).

263 Gov. Code, § 7923.615, subd. (a)(2)(A) (formerly Gov. Code, § 6254, subd. (f)(2)).

264 Gov. Code, § 7923.615, subd. (a)(2)(B) (formerly Gov. Code, § 6254, subd. (f)(2)).

265 Gov. Code, § 7923.615, subd. (a)(2)(D) (formerly Gov. Code, § 6254, subd. (f)(2)).

266 Gov. Code, § 7923.615, subd. (a)(2)(E) (formerly Gov. Code, § 6254, subd. (f)(2)).

267 These listed crimes include various Penal Code sections which relate to topics such as sexual abuse, child abuse, hate crimes, and stalking.

268 Gov. Code, § 7923.615, subd. (a)(2)(C), (b) (formerly § 6254, subd. (f)(2)).

269 Gov. Code, § 7923.620 (formerly § 6254, subd. (f)); Pen. Code, § 841.5; *Los Angeles Police Dept. v. United Reporting Pub. Corp.* (1999) 528 U.S. 32.

Video or Audio Recordings that Relate to Critical Incidents

Beginning on July 1, 2019, video or audio that relates to critical incidents may only be withheld under certain circumstances and timeframes.[270]

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; or (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.[271]

Disclosure of such video or audio may be delayed for up to 45 days, during an active criminal or administrative investigation into the incident, if the agency determines that disclosure would substantially interfere with the investigation.[272] After 45 days, and up to one year after the incident, disclosure may continue to be delayed if the agency can demonstrate that disclosure would substantially interfere with the investigation. After one year from the date of the incident, the agency may continue to delay disclosure only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation.[273]

If an agency delays disclosure pursuant to this clause, 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.[274]

Video or audio may be redacted if the agency determines that a reasonable expectation of privacy outweighs the public interest in disclosure. However, the redactions should be limited to protect those privacy interests and 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.[275] If protecting the privacy interest is not possible through redaction, and the privacy interest outweighs the public interest in disclosure, the agency may withhold the video or audio from the public.[276] However, the video or audio shall be disclosed promptly, upon request, to the subject of the recording or their representative as described in the statute.[277]

Staff time incurred in searching for, reviewing, and redacting video or audio is not chargeable to the PRA requester.[278]

Coroner Photographs or Video

No copies, reproductions, or facsimiles of a photograph, negative, print, or video recording of a deceased person taken by or for the coroner (including by local law enforcement personnel) at the scene of death, or in the course of a postmortem examination or autopsy, may be disseminated except as provided by statute.[279]

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270 Gov. Code, § 7923.625 (formerly § 6254, subd. (f)(4)).

271 Gov. Code, § 7923.625, subd. (e) (formerly § 6254, subd. (f)(4)(C)).

272 Gov. Code, § 7923.625, subd. (a)(1) (formerly § 6254, subd. (f)(4)(A)(i)).

273 Gov. Code, § 7923.625, subd. (a)(2) (formerly § 6254, subd. (f)(4)(A)(ii)).

274 Gov. Code, § 7923.625, subd. (a)(2) (formerly § 6254, subd. (f)(4)(A)(ii)).

275 Gov. Code, § 7923.625, subd. (b)(1) (formerly § 6254, subd. (f)(4)(B)(i))

276 Gov. Code, § 7923.625, subd. (b)(2) (formerly § 6254, subd. (f)(4)(B)(ii)).

277 Gov. Code, § 7923.625, subd. (b)(2)(A-C) (formerly § 6254, subd. (f)(4)(B)(ii)(I-III)).

278 *National Lawyers Guild v. City of Hayward* (2020) 9 Cal. 5th 488.

279 Code Civ. Proc., § 129.

Automated License Plate Readers Data

Automated License Plate Reader (ALPR) scan data is not considered "records of investigations" because the scans are not the result of any targeted inquiry into any particular crime or crimes.[280] As such, this data is not subject to the law enforcement records exemption.

Mental Health Detention Information

All information and records obtained in the course of providing services to a mentally disordered individual who is gravely disabled or a danger to others or him or herself, and who is detained and taken into custody by a peace officer, are confidential and may only be disclosed to enumerated recipients and for the purposes specified in state law.[281] Willful, knowing release of confidential mental health detention information can create liability for civil damages.[282]

> ▶ **PRACTICE TIP:**
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> All information obtained in the course of a mental health detention (often referred to as a "5150 detention") is confidential, including information in complaint or incident reports that would otherwise be subject to disclosure under the PRA.

Elder Abuse Records

Reports of suspected abuse or neglect of an elder or dependent adult, and information contained in such reports, are confidential and may only be disclosed as permitted by state law.[283] The prohibition against unauthorized disclosure applies regardless of whether a report of suspected elder abuse or neglect is from someone who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not for compensation (a mandated reporter), or from someone else.[284] Unauthorized disclosure of suspected elder abuse or neglect information is a misdemeanor.[285]

Juvenile Records

Records or information gathered by law enforcement agencies relating to the detention of, or taking of, a minor into custody or temporary custody are confidential and subject to release only in certain circumstances and by certain specified persons and entities.[286] Juvenile court case files are subject to inspection only by specific listed persons and are governed by both statute and state court rules.[287]

280 *American Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal. 5th 1032.

281 Welf. & Inst. Code, §§ 5150, 5328.

282 Welf. & Inst. Code, § 5330.

283 Welf. & Inst. Code, § 15633.

284 Welf. & Inst. Code, § 15633.

285 Welf. & Inst. Code, §15633.

286 Welf. & Inst. Code, §§ 827, 828; see Welf & Inst. Code, § 827.9 (applies to Los Angeles County only). See also *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767 (release of information regarding minor who has been temporarily detained and released without any further proceedings.)

287 Welf. & Inst. Code, § 827.

▶ PRACTICE TIP:

Some local courts have their own rules regarding inspection and they may differ from county to county and may change from time to time. Care should be taken to periodically review the rules as the presiding judge of each juvenile court makes their own rules.

Different provisions apply to dissemination of information gathered by a law enforcement agency relating to the taking of a minor into custody where it is provided to another law enforcement agency, including a school district police or security department, or other agency or person who has a legitimate need for information for purposes of official disposition of a case.[288] In addition, a law enforcement agency must release the name of and descriptive information relating to any juvenile who has escaped from a secure detention facility.[289]

Child Abuse Reports

Reports of suspected child abuse or neglect, including reports from those who are "mandated reporters," such as teachers and public school employees and officials, physicians, children's organizations, and community care facilities, and child abuse and neglect investigative reports that result in a summary report being filed with the Department of Justice, are confidential and may only be disclosed to the persons and agencies listed in state law.[290] Unauthorized disclosure of confidential child abuse or neglect information is a misdemeanor.[291]

Library Patron Use Records

All patron use records of any library that is supported in whole or in part by public funds are confidential and may not be disclosed except to persons acting within the scope of their duties within library administration, upon written authorization from the person whose records are sought, or by court order.[292] The term "patron use records" includes written or electronic records that identify the patron, the patron's borrowing information, or use of library resources, including database search records and any other personally identifiable information requests or inquiries.[293] This exemption does not extend to statistical reports of patron use or records of fines collected by the library.[294]

Library Circulation Records

Library circulation records that are kept to identify the borrowers, and library and museum materials presented solely for reference or exhibition purposes, are exempt from disclosure.[295] Further, all registration and circulation records of any library that is (in whole or in part) supported by public funds are confidential.[296] The confidentiality of library circulation records does not extend to records of fines imposed on borrowers.[297]

288 Welf & Inst. Code, § 828, subd. (a); Cal. Rules of Court, rule 5.552(b).

289 Welf & Inst. Code, § 828, subd. (b).

290 Pen. Code, §§ 11165.6, 11165.7, 11167.5, 11169.

291 Pen. Code, § 11167.5, subd. (a).

292 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

293 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

294 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

295 Gov. Code, § 7927.100, subd. (a) (formerly Gov. Code, §6254, subd. (j)).

296 Gov. Code, § 7927.105, subd. (c) (formerly Gov. Code, § 6254, subd. (j)).

297 Gov. Code, § 7927.100, subd. (b) (formerly Gov. Code, § 6254, subd. (j)).

Licensee Financial Information

When a local agency requires that applicants for licenses, certificates, or permits submit personal financial data, that information is exempt from disclosure.[298] One frequent example of this is the submittal of sales or income information under a business license tax requirement. However, this exemption is construed narrowly and does not apply to financial information filed by an existing licensee or franchisee to justify a rate increase, because the franchisee is not merely applying for a license but is contractually assuming a city function which requires monitoring and regular review.[299]

Medical Records

California's Constitution protects a person's right to privacy in his or her medical records.[300] Therefore, the PRA exempts from disclosure "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."[301] In addition, the PRA exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law,"[302] including, but not limited to, those described in the Confidentiality of Medical Information Act,[303] physician/patient privilege,[304] the Health Data and Advisory Council Consolidation Act,[305] and the Health Insurance Portability and Accountability Act. [306]

> **▶ PRACTICE TIP:**
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> Both Gov. Code sections 7927.700 and 7927.705 probably apply to records protected under the physician/patient privilege, the Confidentiality of Medical Information Act, the Health Data and Advisory Council Consolidation Act, and the Health Insurance Portability and Accountability Act. In addition, individually identifiable health information is probably also exempt from disclosure under the "public interest" exemption in Government Code section 7922.000.

Health Data and Advisory Council Consolidation Act

Any organization that operates, conducts, owns, or maintains a health facility, hospital, or freestanding ambulatory surgery clinic must file reports with the state that include detailed patient health and financial information.[307] Patient medical record numbers, and any other data elements of these reports that could be used to determine the identity of an individual patient are exempt from disclosure.[308]

298 Gov. Code, § 7925.005 (formerly Gov. Code, § 6254, subd. (n)).

299 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 779–780.

300 Cal. Const., art. I, § 1; *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 41.

301 Gov. Code, § 7927.700 (formerly Gov. Code, § 6254, subd. (c)).

302 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

303 Civ. Code, §§ 56 *et seq.*

304 Evid. Code, §§ 990 *et. seq.*

305 Health & Saf. Code, §§ 128675 *et seq.*

306 42 U.S.C. § 1320d.

307 Health & Saf. Code, §§ 128735, 128736, 128737.

308 Health & Saf. Code, § 128745, subd. (c)(6).

Physician/Patient Privilege

Patients may refuse to disclose, and prevent others from disclosing, confidential communications between themselves and their physicians.[309] The privilege extends to confidential patient/physician communication that is disclosed to third parties where reasonably necessary to accomplish the purpose for which the physician was consulted.[310]

> **▶ PRACTICE TIP:**
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> Patient medical information provided to local agency emergency medical personnel to assist in providing emergency medical care may be subject to the physician/patient privilege if providing the privileged information is reasonably necessary to accomplish the purpose for which the physician was, or will be, consulted, including emergency room physicians.

Confidentiality of Medical Information Act

Subject to certain exceptions, health care providers, health care service plan providers, and contractors are prohibited from disclosing a patient's individually identifiable medical information without first obtaining authorization.[311] Employers must establish appropriate procedures to ensure the confidentiality and appropriate use of individually identifiable medical information.[312] Local agencies that are not providers of health care, health care service plans, or contractors as defined in state law may possess individually identifiable medical information protected under state law that originated with providers of health care, health care service plans, or contractors.[313]

Health Insurance Portability and Accountability Act

Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) in 1996 to improve portability and continuity of health insurance coverage and to combat waste, fraud, and abuse in health insurance and health care delivery through the development of a health information system and establishment of standards and requirements for the electronic transmission of certain health information.[314] The U.S. Department of Health and Human Services Secretary (HHS) has issued privacy regulations governing use and disclosure of individually identifiable health information by "covered entities" — essentially health plans, health care clearinghouses, and any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA.[315] Persons[316] who knowingly and in violation of federal law use or cause to be used a unique health identifier, obtain individually identifiable health information relating to an individual, or disclose

309 Evid. Code, § 994.

310 Evid. Code, § 992.

311 Civ. Code, §§ 56.10, subd. (a); 56.05, subd. (g). "Provider of health care" as defined means persons licensed under Business & Professions Code section 500 *et seq*, or Health & Safety Code section1797 and following, and clinics, health dispensaries, or health facilities licensed under Health and Safety Code section1200 *and following*. "Health care service plan" as defined means entities regulated under Health & Safety Code section 1340 and following. "Contractor" as defined means medical groups, independent practice associations, pharmaceutical benefits managers, and medical service organizations that are not providers of health care or health care service plans.

312 Civ. Code, § 56.20.

313 Civ. Code, § 56.05, subd. (g).

314 Health Insurance Portability and Accountability Act of 1996, Pub L No. 104-191, § 261 (Aug. 24, 1996) 110 Stat 1936; 42 U.S.C. 1320d.

315 42 U.S.C. § 1320d-1– d-3, Health and Human Services Summary of the Privacy Rule, May, 2003. The final privacy regulations were issued in December, 2000 and amended in August, 2002. The definitions of "health information" and "individually identifiable health information" in the privacy regulations are in 45 C.F.R. 160.103. The general rules governing use and disclosure of protected health information are in 45 C.F.R. 164.502.

316 Persons (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d-9(b)(3)) and the individual obtained or disclosed such information without authorization. 42 U.S.C. § 1320d-6 (a).

individually identifiable health information to another person are subject to substantial fines and imprisonment of not more than one year, or both, and to increased fines and imprisonment for violations under false pretenses or with the intent to use individually identifiable health information for commercial advantage, personal gain, or malicious harm.[317] Federal law also permits the Health and Human Services Secretary to impose civil penalties[318]

Workers' Compensation Benefits

Records pertaining to the workers' compensation benefits for an individually identified employee are exempt from disclosure as "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy."[319] The PRA further prohibits the disclosure of records otherwise exempt or prohibited from disclosure pursuant to federal and state law.[320] State law prohibits a person or public or private entity who is not a party to a claim for workers' compensation benefits from obtaining individually identifiable information obtained or maintained by the Division of Workers' Compensation on that claim.[321]

Certain information may be subject to disclosure once an application for adjudication has been filed.[322] If the request relates to pre-employment screening, the administrative director must notify the person about whom the information is requested and include a warning about discrimination against persons who have filed claims for workers' compensation benefits. Further, a residential address cannot be disclosed, except to law enforcement agencies, the district attorney, other governmental agencies, or for journalistic purposes. Individually identifiable information is not subject to subpoena in a civil proceeding without notice and a hearing at which the court is required to balance the respective interests — privacy and public disclosure. Individually identifiable information may be used for certain types of statistical research by specifically listed persons and entities.[323]

Official Information Privilege

A local agency may refuse to disclose official information.[324] "Official information" is statutorily defined as "information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed to the public prior to the time the claim of privilege is made."[325] However, the courts have somewhat expanded on the statutory definition by determining that certain types of information, such as police investigative files and medical information, are "by [their] nature confidential and widely treated as such" and thus protected from disclosure by the privilege.[326] Therefore, "official information" includes information that is protected by a state or federal statutory

317 42 U.S.C. § 1320d-6.Federal law defines "individually identifiable health information" as any information collected from an individual that is created or received by a health care provider, health plan, employer or health care clearing house, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

318 42 U.S.C. § 1320d-5.

319 Gov. Code, § 7927.700 (formerly Gov. Code, § 6254, subd. (c)).

320 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

321 Lab. Code, § 138.7, subd. (a). This state statute defines "individually identifiable information" to mean "any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity."

322 Lab. Code, §§ 5501.5, 138.7.

323 Lab Code, §138.7.

324 Evid. Code, § 1040.

325 Evid. Code, § 1040, subd. (a).

326 *Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363, 373–374.

privilege or information, the disclosure of which is against the public interest, because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.[327]

The local agency has the right to assert the official information privilege both to refuse to disclose and to prevent another from disclosing official information.[328]

Where the disclosure is prohibited by state or federal statute, the privilege is absolute, unless there is an exception.[329] In all other respects, it is conditional and requires a judge to weigh the necessity for preserving the confidentiality of information against the necessity for disclosure in the interest of justice.[330] This is similar to the weighing process provided for in the PRA — allowing nondisclosure when the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.[331] As part of the weighing process a court will look at the consequences to the public, including the effect of the disclosure on the integrity of public processes and procedures.[332] This is typically done through *in camera* judicial review.[333]

There are a number of cases interpreting this statute.[334] While many of the cases interpreting this privilege involve law enforcement records, other cases arise out of licensing and accreditation-type activities. The courts address these types of cases on an individualized basis and further legal research should be done within the context of particular facts.

> **▶ PRACTICE TIP:**
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> Although there is no case law directly on point, this privilege, along with the informant privilege, may be asserted to protect the identities of code enforcement complainants and whistleblowers.

Pending Litigation or Claims

The PRA exempts from disclosure records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to the California Government Claims Act, until the pending litigation or claim has been finally adjudicated or otherwise settled.[335] Although the phrase "pertaining to" pending litigation or claims might seem broad, the courts nevertheless have construed the exemption narrowly, consistent with the underlying policy of the PRA to promote access to public records. Therefore, the claim itself is not exempt from disclosure — the exemption applies only to documents specifically prepared by, or at the direction of, the local agency for use in existing or anticipated litigation.[336]

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327 *White v. Superior Court* (2002) 102 Cal.App.4th.Supp. 1, 6.

328 Evid. Code, § 1040, subd. (b).

329 See Evid. Code § 1040, subd. (c) (notwithstanding any other law, the Employment Development Department shall disclose to law enforcement agencies, in accordance with subdivision (i) of Section 1095 of the Unemployment Insurance Code, information in its possession relating to any person if an arrest warrant has been issued for the person for commission of a felony).

330 See also exception in Evid. Code § 1040, subd. (c).

331 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).

332 *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 126.

333 The term "*in camera*" refers to a review of the document in the judge's chambers outside the presence of the requesting party.

334 *Department of Motor Vehicles v. Superior Court, supra*, 100 Cal.App.4th 363; *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal. App.4th 810; *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759.

335 Gov. Code, § 7927.200 (formerly Gov. Code, § 6254, subd. (b)).

336 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420–1421; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1420.

It may sometimes be difficult to determine whether a particular record was prepared specifically for use in litigation or for other purposes related to the underlying incident. For example, an incident report may be prepared either in anticipation of defending a potential claim, or simply for risk management purposes. In order for the exemption to apply, the local agency would have to prove that the dominant purpose of the record was to be used in defense of litigation.[337]

Attorney billing invoices reflecting work in active and ongoing litigation are exempt from disclosure under the attorney-client privilege or attorney work product doctrine.[338] The Supreme Court reasoned that the content of such invoices is so closely related to attorney-client communications that its disclosure may reveal legal strategy or consultation. Once a matter is concluded, however, portions of attorney invoices reflecting fee totals (not billing entries or portions of invoices that describe the work performed for a client) must be disclosed unless such totals reveal anything about the legal consultation such as insight into litigation strategy, the substance of the legal consultation, or clues about legal strategy.[339] This is a factual analysis that weighs various factors.

It is important to remember that even members of the public that have filed a claim against or sued a local agency are entitled to use the PRA to obtain documents that may be relevant to the claim or litigation. The mere fact that the person might also be able to obtain the documents in discovery is not a ground for rejecting the request under the PRA.[340]

The pending litigation exemption does not prevent members of the public from obtaining records submitted to the local agency pertaining to existing or anticipated litigation, such as a claim for monetary damages filed prior to a lawsuit, because the records were not prepared by the local agency.[341] Moreover, while medical records are subject to a constitutional right of privacy, and generally exempt from production under the PRA and other statutes,[342] an individual may be deemed to have waived the right to confidentiality by submitting medical records to the public entity in order to obtain a settlement.[343]

Once the claim or litigation is no longer "pending," records previously shielded from disclosure by the exemption must be produced, unless covered by another exemption. For example, the public may obtain copies of depositions from closed cases,[344] and documents concerning the settlement of a claim that are not shielded from disclosure by other exemptions.[345] Exemptions that may be used to withhold documents from disclosure after the claim or litigation is no longer pending include the exemptions for law enforcement investigative reports, medical records, and attorney-client privileged records and attorney work product.[346] Particular records or information relevant to settlement of a closed claim or case may also be subject to nondisclosure under the public interest exemption to the extent the local agency can show the public interest in nondisclosure clearly outweighs the public interest in disclosure.[347]

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337 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1419.

338 *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 297; *County of Los Angeles Bd. of Supervisors v. Superior Court* (2017) 12 Cal. App.5th 1264, 1273-1274.

339 *County of Los Angeles Bd. of Supervisors v. Superior Court, supra*, 12 Cal.App.5th at pp. 1274-1275. See "Attorney Bills and Retainer Agreements," p. 33.

340 *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77.

341 *Poway Unified Sch Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1502–1505.

342 See "Medical Records," p. 46.

343 *Poway Unified Sch Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1505.

344 *City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083, 1089.

345 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901.

346 See, e.g., *D.I. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.

347 See Gov. Code, §7922.000 (formerly Gov. Code, § 6255).

▶ PRACTICE TIP:

In responding to a request for documents concerning settlement of a particular matter, it is critical to pay close attention to potential application of other exemptions under the PRA. Additionally, if the settlement is approved by the legislative body during a closed session, release of the settlement documents are governed by the Brown Act. It is recommended that you seek the advice of your local agency counsel.

There is considerable overlap between the pending litigation exemption and both the attorney-client privilege[348] and attorney-work-product doctrine.[349] However, the exemption for pending litigation is not limited solely to documents that fall within either the attorney-client privilege or attorney-work-product doctrine.[350] Moreover, while the exemption for pending litigation expires once the litigation is no longer pending, the attorney-client privilege and attorney-work-product doctrine continue indefinitely.[351]

Personal Contact Information

Court decisions have ruled that individuals have a substantial privacy interest in their personal contact information. However, a fact-specific analysis must be conducted to determine whether the public interest exemption protects this information from disclosure, i.e., whether the public interest in nondisclosure clearly outweighs the public interest in disclosure.[352] Application of this balancing test has yielded varying results, depending on the circumstances of the case.

For example, courts have allowed nondisclosure of the names, addresses, and telephone numbers of airport noise complainants.[353] In that instance, the anticipated chilling effect on future citizen complaints weighed heavily in the court's decision. On the other hand, the courts have ordered disclosure of information contained in applications for licenses to carry firearms, except for information that indicates when or where the applicant is vulnerable to attack or that concern the applicant's medical or psychological history or that of members of his or her family.[354] Courts have also ordered disclosure of the names and addresses of residential water customers who exceeded their water allocation under a rationing ordinance,[355] and the names of donors to a university affiliated foundation, even though those donors had requested anonymity.[356]

▶ PRACTICE TIP:

In situations where personal contact information clearly cannot be kept confidential, inform the affected members of the public that their personal contact information is subject to disclosure under the PRA.

348 Evid. Code, § 950 *et seq*; *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725.

349 Code Civ. Proc., § 2018.030.

350 *City of Los Angeles v. Superior Court, supra*, 41 Cal.App.4th 1083, 1087.

351 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373 (attorney-client privilege); *Fellows v. Superior Court* (1980) 108 Cal.App.3d 55, 61–63 (work-product doctrine); *Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th 725. *But see Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282 (holding that the attorney-client privilege protects the confidentiality of invoices for work in pending and active legal matters, but that the privilege may not encompass invoices for legal matters that concluded long ago).

352 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)).

353 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1012.

354 Gov. Code, § 7923.800 (formerly Gov. Code, § 6254, subd. (u)(1)).

355 *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1581-1582.

356 *California State Univ. v. Superior Court* (2001) 90 Cal.App.4th 810, 816.

Posting Personal Contact Information of Elected/Appointed Officials on the Internet

The PRA prohibits a state or local agency from posting on the Internet the home address or telephone number of any elected or appointed officials without first obtaining their written permission.[357] The prohibition against posting home addresses and telephone numbers of elected or appointed officials on the Internet does not apply to a comprehensive database of property-related information maintained by a state or local agency that may incidentally contain such information, where the officials are not identifiable as such from the data, and the database is only transmitted over a limited-access network, such as an intranet, extranet, or virtual private network, but not the Internet.[358]

The PRA also prohibits someone from knowingly posting on the Internet the home address or telephone number of any elected or appointed official, or the official's "residing spouse" or child, and either threatening or intending to cause imminent great bodily harm.[359] Similarly, the PRA prohibits soliciting, selling, or trading on the Internet the home address or telephone number of any elected or appointed official with the intent of causing imminent great bodily harm to the official or a person residing at the official's home address.[360]

In addition, the PRA prohibits a person, business, or association from publicly posting or displaying on the Internet the home address or telephone number of any elected or appointed official where the official has made a written demand to the person, business, or association not to disclose his or her address or phone number.[361]

Personnel Records

The PRA exempts from disclosure "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."[362] In addition, the public interest exemption may protect certain personnel records from disclosure.[363] In determining whether to allow access to personnel files, the courts have determined that the tests under each exemption are essentially the same: the extent of the local agency employee's privacy interest in certain information and the harm from its unwarranted disclosure is weighed against the public interest in disclosure. The public interest in disclosure will be considered in the context of the extent to which the disclosure of the information will shed light on the local agency's performance of its duties.[364]

Decisions from the California Supreme Court have determined that local agency employees do not have a reasonable expectation of privacy in their name, salary information, and dates of employment. This interpretation also applies to police officers absent unique, individual circumstances.[365]

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357 See Gov. Code, § 7920.500 (formerly Gov. Code, § 6254.21, subd. (f)) (containing a non-exhaustive list of individuals who qualify as "elected or appointed official[s]").

358 91 Ops.Cal.Atty.Gen. 19 (2008).

359 Gov. Code, § 7928.210 (formerly Gov. Code, § 6254.21, subd. (b)).

360 Gov. Code, § 7928.230 (formerly Gov. Code, § 6254.21, subd. (d)).

361 See Gov. Code, §§ 7928.215-7928.225 (formerly Gov. Code, § 6254.21, subd. (c)).

362 Gov. Code, § 7920.520 (formerly Gov. Code, § 6254, subd. (c)).

363 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255(a)); *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755. See also, *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272.

364 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 335; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 300; *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 231; *BRV, Inc. v. Superior Court, supra*, 143 Cal.App.4th 742, 755; *American Fed'n of State, County & Mun. Employees (AFSCME), Local 1650 v. Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913, 914–916.

365 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court, supra*, 42 Cal.4th 319, 327; *Commission on Peace Officer Standards & Training v. Superior Court, supra*, 42 Cal.4th 278, 289–293.

In situations involving allegations of non-law enforcement local agency employee misconduct, courts have considered the following factors in determining whether disclosure of employment investigation reports or related records would constitute an unwarranted invasion of personal privacy:

- Are the allegations of misconduct against a high-ranking public official or a local agency employee in a position of public trust and responsibility (e.g., teachers, public safety employees, employees who work with children)?
- Are the allegations of misconduct of a substantial nature or trivial?
- Were findings of misconduct sustained or was discipline imposed?

Courts have upheld the public interest against disclosure of "trivial or groundless" charges.[366] In contrast, when "the charges are found true, or discipline is imposed," the public interest likely favors disclosure.[367] In addition, "where there is reasonable cause to believe the complaint to be well founded, the right of public access to related public records exists."[368] However, even if the local agency employee is exonerated of wrongdoing, disclosure may be warranted if the allegations of misconduct involve a high-ranking public official or local agency employee in a position of public trust and responsibility, given the public's interest in understanding why the employee was exonerated and how the local agency employer treated the accusations.[369]

With respect to personnel investigation reports, although the PRA's personnel exemption may not exempt such a report from disclosure, the attorney-client privilege or attorney-work-product doctrine may apply.[370] Further, discrete portions of the personnel report may still be exempt from disclosure and redacted, such as medical information contained in a report or the names of third-party witnesses.[371]

The courts have permitted persons who believe their rights may be infringed by a local agency decision to disclose records to bring a "reverse PRA action" to seek an order preventing disclosure of the records.[372]

Peace Officer Personnel Records

With certain exceptions under Penal Code section 832.7, peace officer personnel records, including internal affairs investigation reports regarding alleged misconduct, are both confidential and privileged.[373] Records outside of these certain exemptions fall within the category of records, "the disclosure of which is exempted or prohibited pursuant to federal or state law ...."[374] Records of an independent investigation into a complaint of alleged harassment by an elected county sheriff, including the complaint and the report, are not protected peace officer personnel records

366 *AFSCME, Local 1650 v. Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913, 918.

367 *Ibid.*

368 *Ibid.*

369 *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 223–224; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1275–1276; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 759; *Bakersfield City Sch. Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045–1047; *AFSCME, Local 1650 v. Regents of University of California* (1978) 80 Cal.App.3d 913, 918.

370 See "Attorney-client Communications and Attorney Work Product," page 31; *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1035–1036. But see *BRV, Inc. v. Superior Court, supra*, 143 Cal.App.4th 742, where on the facts of that case, an investigation report that arguably was privileged was ordered disclosed.

371 *BRV, Inc. v. Superior Court, supra*, 143 Cal.App.4th 742, 759 (permitting redaction of names, home addresses, phone numbers, and job titles "of all persons mentioned in the report other than [the subject of the report] or elected members" of the school board); *Marken v. Santa Monica-Malibu Unified Sch. Dist., supra*, 202 Cal.App.4th 1250, 1276 (permitting redaction of the identity of the complainant and other witnesses, as well as other personal information in the investigation report).

372 *Marken v. Santa Monica-Malibu Unified Sch. Dist., supra*, 202 Cal.App.4th 1250, 1264–1271. See also "Reverse PRA Litigation," p. 67.

373 Pen. Code § 832.7(a). See also *Towner v. County of Ventura* (2021) 63 Cal.App.5th 761. For definition of "Personnel Records" see Pen. Code, § 832.8.

374 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)); Pen. Code, §§ 832.7–832.8; *International Fed'n of Prof.& Tech.Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 341; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1431.

under Section 6254(k) of the PRA, or Sections 832.7 and 832.8 of the Penal Code, or protected citizen complaint records under Section 832.5 of the Penal Code, because an elected sheriff is not an employee of the county, but rather accountable directly to the county voters.[375]

Except as discussed below, the discovery and disclosure of the personnel records of peace officers are governed exclusively by statutory provisions contained in the Evidence Code and Penal Code. Peace officer personnel records and records of citizen complaints "…or information obtained from these records…" are confidential and "shall not" be disclosed in any criminal or civil proceeding except by discovery pursuant to statutorily prescribed procedures.[376] The appropriate procedure for obtaining information in the protected peace officer personnel files is to file a motion commonly known as a "*Pitchess*" motion, which by statute entails a two-part process involving first a determination by the court regarding good cause and materiality of the information sought and a subsequent confidential review by the court of the files, where warranted.[377]

Notwithstanding the general confidentiality of peace officer personnel records or the law enforcement records exemption under the PRA, agencies must release all records, including investigative reports, related to certain incidents or allegations.[378] These include:

- Records relating to the reports, investigations, or findings regarding an incident involving the discharge of a firearm at a person by an officer.[379]
- Records relating to the reports, investigations, or findings regarding an incident involving the use of force against a person by an officer that resulted in death or great bodily injury.[380]
- Records relating to a sustained finding that an officer used unreasonable or excessive force.[381]
- Records relating to a sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.[382]
- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that an officer engaged in sexual assault involving a member of the public.[383]
- Records relating to a sustained finding of dishonesty by an officer related to the reporting, investigation, or prosecution of a crime, or directly related to the reporting or investigation of misconduct by another officer.[384]
- Records relating to a sustained finding that an officer engaged in conduct involving prejudice or discrimination against a person based on a protected status, as listed in the statute.[385]

375 *Essick v. County of Sonoma* (2022) 80 Cal.App.5th 562.

376 Pen. Code, § 832.7; Evid. Code, §§ 1043, 1046.

377 See, e.g., *People v. Mooc* (2001) 26 Cal.4th 1216; *People v. Thompson* (2006) 141 Cal.App.4th 1312; *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135.

378 Pen. Code § 832.7 subd. (b)(3).

379 Pen. Code, § 832.7, subd. (b)(1)(A)(i).

380 Pen. Code, § 832.7, subd. (b)(1)(A)(ii).

381 Pen. Code, § 832.7, subd. (b)(1)(A)(iii).

382 Pen. Code, § 832.7, subd. (b)(1)(A)(iv).

383 Pen. Code, § 832.7, subd. (b)(1)(B)(i).

384 Pen. Code, § 832.7, subd. (b)(1)(C).

385 Pen. Code, § 832.7, subd. (b)(1)(D).

- Records relating to a sustained finding that an officer made an unlawful arrest or conducted an unlawful search.[386]

For purposes of disclosure, a finding is "sustained" if there has been a final determination that the actions of the peace officer or custodial officer violated law or department policy following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code.[387]

While some of the exceptions to the general confidentiality provisions were enacted effective January 1, 2019, the statute applies retroactively, even to those incidents that occurred prior to 2019. [388]

An agency is required to disclose non-confidential police records retained by the agency, regardless of whether the agency prepared, owned, or used the records.[389]

In general, records subject to disclosure under Penal Code section 832.7 subdivision (b) shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.[390] However, disclosure may be delayed based on specified circumstances, where there is an active criminal or administrative investigation. [391] Unless the agency determines that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or someone else, the time to provide the records can only be extended to 60 days.[392] If disclosure would reasonably be expected to interfere with criminal enforcement, the disclosure can be delayed up to 60 days, the agency must provide a written determination that includes the basis for its determination and the estimated date of disclosure.[393] This written determination must be renewed every 180 days.[394] Under no circumstances can disclosure be delayed for more than 18 months. [395]

In addition, there are other procedural and substantive requirements regarding records that are subject to disclosure under Penal Code section 832.7(b), as follows:

- If the incident is subject to disclosure, records relating to an incomplete investigation must be disclosed if a peace officer resigned during the investigation.[396]
- Records from separate or prior investigations shall not be released unless they are independently subject to disclosure.[397]
- For investigations or incidents that involve multiple officers, care should be given to follow the statutory requirements for portions that may be released and those that must remain confidential.[398]

386 Pen. Code, § 832.7, subd. (b)(1)(C).

387 Pen. Code, § 832.8, subd. (b). See also *Collondrez v. City of Rio Vista* (2021) 61 Cal.App.5th 1039 (Officer had an opportunity for administrative appeal but settled and withdrew the appeal; the disciplinary decision was subject to disclosure as a final determination with a sustained finding).

388 *Ventura County Deputy Sheriffs' Assn. v. County of Ventura* (2021) 61 Cal.App.5th 585.

389 *Becerra v. Superior Court* (2020) 44 Cal.App.5th 897.

390 Pen. Code, § 832.7, subd. (b)(11).

391 Pen. Code, § 832.7, subd. (b)(8).

392 *Ibid.*

393 *Ibid.*

394 *Ibid.*

395 *Ibid.*

396 Pen. Code, § 832.7, subd. (b)(3).

397 Pen. Code, §832.7, subd. (b)(4).

398 Pen. Code, §832.7, subd. (b)(5).

- Redactions are limited to certain listed purposes only.[399] For example, the identity of whistleblowers, complainants, victims, and witnesses are required to remain confidential.[400]
- The local agency may charge only the direct cost of duplication for the production of these records and may not charge for searching or redacting records.[401]
- Attorney-client privilege will not prohibit the disclosure of factual information provided by the local agency to its attorney, or factual information discovered in any investigation conducted by, or on behalf of, the local agency's attorney. Additionally, the privilege will not cover attorney billing records unless the records relate to a legal consultation between the local agency and its attorney in active and ongoing litigation.[402]
- Prior to hiring a lateral police officer, the hiring agency must review any investigations of misconduct maintained by the officer's current or prior employer.[403]

Although the PRA is not a retention statute, Penal Code section 832.7 requires that records with no sustained finding of misconduct be retained for at least five years and records related to sustained misconduct must be retained for a minimum of 15 years.

Confidential peace officer personnel files are not protected from disclosure when the district attorney, attorney general, or grand jury are investigating the conduct of the officers.[404] The other notable exception arises where an officer publishes factual information concerning a disciplinary action that is known by the officer to be false. If the information is published in the media, the employing agency may disclose factual information about the discipline to refute the employee's false statements.[405]

Peace officer "personnel records" include personal data, medical history, appraisals, and discipline; complaints and investigations relating to events perceived by the officer or relating to the manner in which his or her duties were performed; and any other information the disclosure of which would constitute an unwarranted invasion of privacy.[406] The names, salary information, and employment dates and departments of peace officers have been determined to be disclosable records absent unique circumstances.[407] Additionally, official service photographs of peace officers are subject to disclosure and are not exempt or privileged as personnel records unless disclosure would pose an unreasonable risk of harm to the peace officer.[408] The names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (*e.g.*, if there is a specific threat to an officer or an

399 Pen. Code, § 832.7, (b)(6)-(7).

400 Pen. Code, § 832.7, subd. (b)(6).

401 Pen. Code, § 832.7, subd. (b)(10).

402 Pen. Code, § 832.7, subd. (b)(12).

403 Pen. Code, § 832.12, subd. (b).

404 Pen. Code, § 832.7, subd. (a); but see *Towner v. County of Ventura* (2021) 63 Cal.App.5th 761 (District Attorney must maintain confidentiality of the nonpublic files absent compliance with statutorily required judicial review.)

405 Pen. Code, § 832.7, subd. (d).

406 Pen. Code, § 832.8.

407 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court, supra*, 42 Cal.4th 319, 327; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 289–293.

408 *Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695, 700–705.

officer is working undercover).[409] Video captured by a dashboard camera is not a personnel record protected from disclosure.[410]

While the Penal and Evidence Code privileges are not per se applicable in federal court, federal common law does recognize a qualified privilege for "official information" and considers government personnel files to be "official information."[411] Moreover, independent reports regarding officer-involved shootings are not exempt from disclosure, though portions of the report culled from personnel information or officers' statements made in the course of an internal affairs investigation of the shooting are protected and may be redacted from the report.[412] Such a qualified privilege in federal court results in a very similar weighing of the potential benefits of disclosure against potential disadvantages.[413]

Employment Contracts, Employee Salaries, & Pension Benefits

Every employment contract between a local agency and any public official or local agency employee is a public record which is not subject to either the personnel exemption or the public interest exemption.[414] Thus, for example, one court has held that two letters in a city firefighter's personnel file were part of his employment contract and could not be withheld under either the local agency employee's right to privacy in his personnel file or the public interest exemption.[415]

With or without an employment contract, the names and salaries (including performance bonuses and overtime) of local agency employees, including peace officers, are subject to disclosure under the PRA.[416] Public employees do not have a reasonable expectation that their salaries will remain a private matter. In addition, there is a strong public interest in knowing how the government spends its money. Therefore, absent unusual circumstances, the names and salaries of local agency employees are not subject to either the personnel exemption or the public interest exemption.[417]

In addition, the courts have held that local agencies are required to disclose the identities of pensioners and the amount of pension benefits received by such pensioners, reasoning that the public interest in disclosure of the names of pensioners and data concerning the amounts of their pension benefits outweighs any privacy interests the pensioners may have in such information.[418] On the other hand, the courts have found that personal information provided to a retirement system by a member or on a member's behalf, such as a member's personal email address, home address, telephone number, social security number, birthday, age at retirement, benefits election, and health

409 *Long Beach Police Officers Ass'n v. City of Long Beach* (2014) 59 Cal.4th 59, 75; 91 Ops.Cal.Atty.Gen. 11 (2008) (the names of peace officers involved in critical incidents, such as ones involving lethal force, are not categorically exempt from disclosure, however, the balancing test may be applied under the specific factual circumstances of each case to weigh the public interests at stake).

410 *City of Eureka v. Superior Court* (2016) 1 Cal.App.5th 755, 763–765. See also "Law Enforcement Records," p. 38.

411 *Sanchez v. City of Santa Ana* (9th Cir. 1990) 936 F.2d 1027, 1033–1034, cert denied (1991) 502 U.S. 957; *Miller v. Pancucci* (C.D.Cal. 1992) 141 F.R.D. 292, 299–300.

412 *Pasadena Peace Officers Ass'n v. Superior Court* (2015) 240 Cal.App.4th 268, 288–290. See also "Law Enforcement Records," p. 38.

413 Evid. Code, § 1043 *et seq.; Guerra v. Bd. of Trustees* (9th Cir. 1977) 567 F.2d 352; *Kerr v. United States Dist. Court for Northern Dist.* (9th Cir. 1975) 511 F.2d 192, aff'd, (1976) 426 U.S. 394; *Garrett v. City and County of San Francisco* (9th Cir. 1987) 818 F.2d 1515.

414 Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8); Gov. Code, § 53262, subd. (b).

415 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332.

416 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court, supra*, 42 Cal.4th 3 at p. 327.

417 *Commission on Peace Officer Standards & Training v. Superior Court, supra*, 42 Cal.4th 278, 299, 303.

418 *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440, 472.

reports concerning the member, to be exempt from disclosure under the PRA.[419] With regard to the California Public Employees' Retirement System (CalPERS), the identities of and amount of benefits received by CalPERS pensioners are subject to public disclosure.[420]

> **▶ PRACTICE TIP:**
>
> If a member of the public requests information regarding CalPERS from a local agency, make sure to check the terms of any agreement that may exist between the agency and CalPERS for confidentiality requirements.

Contractor Payroll Records

State law establishes requirements for maintaining and disclosing certified payroll records for workers employed on public works projects subject to payment of prevailing wages.[421] State law requires contractors to make certified copies of payroll records available to employees and their representatives, representatives of the awarding body, the Department of Industrial Relations, and the public.[422] Requests are to be made through the awarding agency or the Department of Industrial Relations, and the requesting party is required to reimburse the cost of preparation to the contractor, subcontractors, and the agency through which the request is made prior to being provided the records.[423] Contractors are required to file certified copies of the requested records with the requesting entity within ten days after receipt of a written request.[424]

However, state law also limits access to contractor payroll records. Employee names, addresses, and social security numbers must be redacted from certified payroll records provided to the public or any local agency by the awarding body or the Department of Industrial Relations.[425] Only the social security numbers are to be redacted from certified payroll records provided to joint labor-management committees established pursuant to the federal Labor Management Cooperation Act of 1978.[426] The name and address of the contractor or subcontractor may not be redacted.[427]

The Department of Industrial Relations Director has adopted regulations governing release of certified payroll records and applicable fees.[428] The regulations: (1) require that requests for certified payroll records be in writing and contain certain specified information regarding the awarding body, the contract, and the contractor; (2) require awarding

419 *Sonoma County Employees' Retirement Ass'n v. Superior Court* (2011) 198 Cal.App.4th 986, 1004.

420 Gov. Code, § 20230. See also *SDCERS v. Superior Court* (2011) 196 Cal.App.4th 1228, 1238–1239, citing with approval 25 Ops.Cal.Atty.Gen. 90 (1955), which exempts from disclosure employee election of benefits. For peace officer election of benefits see Pen. Code, §§ 832.7 - 832.8 and *International Fed'n of Prof.& Tech.Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 343.

421 Lab. Code, § 1776.

422 Lab. Code, § 1776, subd. (b).

423 Lab. Code, § 1776, subd. (c).

424 Contractors and subcontractors that fail to do so may be subject to a penalty of $25 per worker for each calendar day until compliance is achieved. Lab. Code, §1776, subds. (d) & (g).

425 Lab. Code, § 1776, subd. (e); *Trustees of Southern Cal. IBEW-NECA Pension Plan v. Los Angeles Unified School District* (2010) 187 Cal.App.4th 621.

426 Lab. Code, § 1776, subd. (e).

427 Lab. Code, § 1776, subd. (e).

428 Lab. Code, § 1776, subd. (i); see Lab. Code, § 16400 *et seq.*

agency acknowledgement of requests; (3) specify required contents of awarding agency requests to contractors for payroll records; and (4) set fees to be paid in advance by persons seeking payroll records.[429]

Test Questions and Other Examination Data

The PRA exempts from disclosure test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided in the portions of the Education Code that relate to standardized tests.[430] Thus, for example, a local agency is not required to disclose the test questions it uses for its employment examinations. State law provides that standardized test subjects may, within 90 days after the release of test results to the test subject, have limited access to test questions and answers upon request to the test sponsor.[431] This limited access may be either through an in-person examination or by release of certain information to the test subject.[432] The Education Code also requires that test sponsors prepare and submit certain reports regarding standardized tests and test results to the California Postsecondary Education Commission.[433] All such reports and information submitted to the Commission are public records subject to disclosure under the PRA.[434]

Public Contracting Documents

Contracts with local agencies are generally disclosable public records, and the public has an interest in knowing whether public resources are being spent for the benefit of the community as a whole or the benefit of only a limited few.[435] When the bids or proposals leading up to the contract become disclosable depends largely upon the type of contract.

Local agencies may award certain types of contracts (for example, contracts for the construction of public works, and for the procurement of goods and non-professional services) to the lowest responsive, responsible bidder through a competitive bidding process.[436] Local agencies usually receive bids for these contracts under seal and then publicly open the bids at a designated time and place. These bids are public records and disclosable as soon as they are opened.

Other local agency contracts (for example, for acquisition of professional services or disposition of property) may be awarded to the successful proposer who is identified through a competitive proposal process. As part of this process, local agencies solicit proposals, evaluate them, and then negotiate with the "winning" proposer. While the public has a strong interest in scrutinizing the process leading to the selection of the winning proposer, a local agency's interest in keeping these proposals confidential frequently outweighs the public's interest in disclosure until negotiations with the winning proposer are complete.[437] Disclosing the details of all the competing proposals can interfere with the local agency's selection process and impair its ability to secure the best possible deal on its constituents' behalf.

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429 8 C.C.R. §§ 16400, 16402.

430 Gov. Code, § 7929.605 (formerly Gov. Code, § 6254, subd. (g)).

431 Ed. Code, § 99157, subd. (a); *Brutsch v. City of Los Angeles* (1982) 3 Cal.App.4th 354.

432 Ed. Code, §§ 99157, subds. (a) & (b).

433 Ed. Code, §§ 99153, 99154.

434 Ed. Code, § 99162.

435 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 833.

436 Pub. Contract Code, § 22038.

437 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1077.

Some local agencies pre-qualify prospective bidders through a request for qualifications process. The pre-qualification packages submitted, including questionnaire answers and financial statements, are exempt from disclosure.[438] Nevertheless, documents containing the names of contractors applying for pre-qualification status are public records and must be disclosed.[439] In addition, the contents of pre-qualification packages may be disclosed to third parties during the verification process, in an investigation of substantial allegations or at an appeal hearing.

> **▶ PRACTICE TIP:**
>
> Local agencies should clearly advise bidders and proposers in their Requests for Bids and Requests for Proposals what bid and proposal documents will be disclosable public records and when they will be disclosable to the public.

Real Estate Appraisals and Engineering Evaluations

The PRA requires the disclosure of the contents of real estate appraisals, or engineering or feasibility estimates, and evaluations made for or by a local agency relative to the acquisition of property, or to prospective public supply and construction contracts, but only when all of the property has been acquired or when agreement on all terms of the contract have been obtained.[440] By its plain terms, this exemption only applies while the acquisition or prospective contract is pending. Once all the property is acquired or agreement on all terms of the contract have been obtained, the exemption will not apply. In addition, this exemption is not intended to supersede the law of eminent domain.[441] Thus, for example, this exemption would not apply to appraisals of owner-occupied residential property of four units or less, where disclosure of such appraisals is required by the Eminent Domain Law or related laws such as the California Relocation Assistance Act.[442]

> **▶ PRACTICE TIP:**
>
> If the exemption for real estate appraisals and engineering evaluations does not clearly apply, consider whether the facts of the situation justify withholding the record under Government Code section 7922.000.

Recipients of Public Assistance

The PRA does not require disclosure of certain types of information related to those who are receiving public assistance. For example, disclosure of information regarding food stamp recipients is prohibited.[443] Subject to certain exceptions, disclosure of certain confidential information pertaining to applicants for or recipients of public social services for any purpose unconnected with the administration of the welfare department also is prohibited.[444]

438 Pub. Contract Code, §§ 10165, 10506.6, 10763, 20101, 20111.5, 20209.7, 20209.26, 20651.5.

439 Pub. Contract Code, § 20101, subd. (a).

440 Gov. Code, § 7928.705. (formerly Gov. Code, § 6254, subd. (h)).

441 Gov. Code, § 7928.705. (formerly Gov. Code, § 6254, subd. (h)).

442 Gov. Code, § 7267.2, subd. (c).

443 Welf. & Inst. Code, § 18909.

444 Welf. & Inst. Code, § 10850. See also *Jonon v. Superior Court* (1979) 93 Cal.App.3d 683, 690 (rejecting claim that all information received by a welfare agency was privileged).

Leases and lists or rosters of tenants of the Housing Authority are confidential and must not be open to inspection by the public, but must be supplied to the respective governing body on request.[445] A Housing Authority has a duty to make available public documents and records of the Authority for inspection, except any applications for eligibility and occupancy which are submitted by prospective or current tenants of the Authority.[446]

The PRA exempts from disclosure records of 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.[447]

Taxpayer Information

Where information that is required from any taxpayer in connection with the collection of local taxes is received in confidence and where the disclosure of that information would result in unfair competitive disadvantage to the person supplying the information, the information is exempt from disclosure.[448] Sales and use tax records may be used only for administration of the tax laws. Unauthorized disclosure or use of confidential information contained in these records can give rise to criminal liability.[449]

> **▶ PRACTICE TIP:**
>
> Make sure to check your local agency's codes and ordinances with respect to local taxes when determining what information submitted by the taxpayer is confidential.

Trade Secrets and Other Proprietary Information

As part of the award and administration of public contracts, businesses will often give local agencies information that the businesses would normally consider to be proprietary. There are three exemptions that businesses often use to attempt to protect this proprietary information — the official information privilege, the trade secret privilege, and the public interest exemption.[450]

However, California's strong public policy in favor of disclosure of public records precludes local agencies from protecting most business information. Both the official information privilege and the public interest exemption require that the public interest in nondisclosure outweigh the public interest in disclosure. While these provisions were designed to protect legitimate privacy interests, California courts have consistently held that when individuals or businesses voluntarily enter into the public sphere, they diminish their privacy interests.[451] Courts have further found that the public interest in disclosure overrides alleged privacy interests. For example, a court ordered a university to release the names of anonymous contributors who received license agreements for luxury suites at the school's sports arena. Another court ordered a local agency to release a waste disposal contractor's private financial statements used by the local agency to approve a rate increase.[452]

445 Health & Saf. Code, § 34283.

446 Health & Saf. Code, § 34332, subd. (c).

447 Gov. Code, § 7927.415 (formerly Gov. Code, § 6254.1).

448 Gov. Code, § 7925.000 (formerly Gov. Code, § 6254, subd. (i)); see also Rev. & Tax. Code, § 7056.

449 Rev. & Tax. Code, §§ 7056, 7056.5.

450 See, e.g., *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

451 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 834; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d 762, 781.

452 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court, supra*, 90 Cal.App.4th 810; *San Gabriel Tribune v. Superior Court, supra*, 143 Cal.App.3d 762.

The trade secret privilege is for information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[453]

However, even when records contain trade secrets, local agencies must determine whether disclosing the information is in the public interest. When businesses give local agencies proprietary information, courts will examine whether disclosure of that information serves the public interest.[454]

The PRA contains several exemptions that address specific types of information that are in the nature of trade secrets, including pesticide safety and efficacy information,[455] air pollution data,[456] and corporate siting information (financial records or proprietary information provided to government agencies in connection with retaining, locating, or expanding a facility within California).[457]

Other exemptions cover types of information that could include but are not limited to trade secrets — for example, certain information on plant production, utility systems development data, and market or crop reports.[458]

> ▶ **PRACTICE TIP:**
>
> Issues concerning trade secrets and proprietary information tend to be complex and fact specific. Consider seeking the advice of your local agency counsel in determining whether records requested are exempt from disclosure.

Utility Customer Information

Personal information expressly protected from disclosure under the PRA includes names, credit histories, usage data, home addresses, and telephone numbers of local agencies' utility customers.[459] This exception is not absolute, and customers' names, utility usage data, and home addresses may be disclosable under certain scenarios. For example, disclosure is required when requested by a customer's agent or authorized family member,[460] or an officer or employee of another governmental agency when necessary for performance of official duties,[461] by court order or request of a law enforcement agency relative to an ongoing investigation,[462] when the local agency determines the

453 Civ. Code, § 3426.1, subd. (d). This trade secret definition is set forth in the Uniform Trade Secrets Act ("UTSA"). However, Civil Code section 3426.7, subd. (c) states that any determination as to whether disclosure of a record under the Act constitutes a misappropriation of a trade secret shall be made pursuant to the law in effect before the operative date of the UTSA. At that time, California used the Restatement definition of a trade secret, which was lengthy. See *Uribe v. Howie* (1971) 19 Cal.App.3d 194. Accordingly, it is not clear that the trade secret definition that applies generally under the UTSA is the trade secret definition that applies in the context of a public records request.

454 *Uribe v. Howie, supra*, 19 Cal.App.3d at p. 213.

455 Gov. Code, § 7924.305 (formerly Gov. Code, § 6254.2).

456 Gov. Code, § 7924.510 (formerly Gov. Code, § 6254.7).

457 Gov. Code, § 7927.605 (formerly Gov. Code, § 6254.15).

458 Gov. Code, § 7924.305, subd. (d) (formerly Gov. Code, § 6254, subd. (e)).

459 Gov. Code, § 7927.410 (formerly Gov. Code, § 6254.16.

460 Gov. Code, § 7927.410, subd. (a) (formerly Gov. Code, § 6554.16, subd. (a)).

461 Gov. Code, § 7927.410, subd. (b) (formerly Gov. Code, § 6254.16, subd. (b)).

462 Gov. Code, § 7927.410, subd. (c) (formerly Gov. Code, § 6254.16, subd. (c)).

customer used utility services in violation of utility policies,[463] or if the local agency determines the public interest in disclosure clearly outweighs the public interest in nondisclosure.[464]

Utility customers who are local agency elected or appointed officials with authority to determine their agency's utilities usage policies have lesser protection of their personal information because their names and usage data are disclosable upon request.[465]

Public Interest Exemption

The PRA establishes a "public interest" or "catchall" exemption that permits local agencies to withhold a record if the agency can demonstrate that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.[466] Weighing the public interest in nondisclosure and the public interest in disclosure under the public interest exemption is often described as a balancing test.[467] The PRA does not specifically identify the public interests that might be served by not making the record public under the public interest exemption, but the nature of those interests may be inferred from specific exemptions contained in the PRA. The scope of the public interest exemption is not limited to specific categories of information or established exemptions or privileges. Each request for records must be considered on the facts of the particular case in light of the competing public interests.[468]

The records and situations to which the public interest exemption may apply are open-ended and, when it applies, the public interest exemption alone is sufficient to justify nondisclosure of local agency records. The courts have relied exclusively on the public interest exemption to uphold nondisclosure of:

- Local agency records containing names, addresses, and phone numbers of airport noise complainants;
- Proposals to lease airport land prior to conclusion of lease negotiations;
- Information kept in a public defender's database about police officers; and
- Individual teacher test scores, identified by name, designed to measure each teacher's effect on student performance on standardized tests.[469]

The public interest exemption is versatile and flexible, in keeping with its purpose of addressing circumstances not foreseen by the Legislature. For example, in one case, the court held local agencies could properly consider the burden of segregating exempt from nonexempt records when applying the balancing test under the public interest exemption.[470] In that case, the court held that the substantial burden of redacting exempt information from law enforcement intelligence records outweighed the marginal and speculative benefit of disclosing the remaining nonexempt information. In another case, the court applied the balancing test to the time of disclosure to hold that

463 Gov. Code, § 7927.410, subd. (d) (formerly Gov. Code, § 6254.16, subd. (d)).

464 Gov. Code, § 7927.410, subd. (f) (formerly Gov. Code, § 6254.16, subd. (f)).

465 Gov. Code, § 7927.410, subd. (e) (formerly Gov. Code, § 6264.16, subd. (e)).

466 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1337–1339.

467 *CBS Broadcasting, Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 908.

468 *Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at p. 1338.

469 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065; *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001; *Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222.

470 *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.

public disclosure of competing proposals for leasing city airport property could properly await conclusion of the negotiation process.[471]

The requirement that the public interest in nondisclosure must "clearly outweigh" the public interest in disclosure for records to qualify as exempt under the public interest exemption is important and emphasized by the courts. Justifying nondisclosure under the public interest exemption demands a clear overbalance on the side of confidentiality.[472] Close calls usually do not qualify for an exemption. There are a number of examples of cases where a clear overbalance was not present to support nondisclosure under the public interest exemption. The courts have held that the following are all subject to disclosure under the public interest exemption balancing test:

- The identities of individuals granted criminal conviction exemptions to work in licensed day care facilities and the facilities employing them;
- Records relating to unpaid state warrants;
- Court records of a settlement between the insurer for a school district and a minor sexual assault victim;
- Applications for concealed weapons permits;
- Letters appointing then rescinding an appointment to a local agency position;
- The identities and license agreements of purchasers of luxury suites in a university arena; and
- GIS base map information.[473]

The public interest exemption balancing test weighs only public interests — the public interest in disclosure and the public interest in nondisclosure. Agency interests or requester interests that are not also public interests are not considered.[474] For example, the courts have held that the public's interest in information regarding peace officers retained in a database by the public defender in the representation of its clients is slight, and the private interests of the requesters (the police officers listed in the database) were not to be considered in determining whether the database was exempt from disclosure.[475]

471 *Michaelis, Montanari & Johnson v. Superior Court, supra*, 38 Cal.4th 1065.

472 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 657.

473 *CBS Broadcasting Inc., v. Superior Court* (2001) 91 Cal.App.4th 892; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601; *Copley Press, Inc., v. Superior Court* (1998) 63 Cal.App.4th 367; *CBS, Inc. v. Block* (1986) 42 Cal.App.3d 646; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *California State University, Fresno Assn. v. Superior Court* (2001) 90 Cal.App.4th 810; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157; *County of Santa Clara v. Superior Court* (2009) 170 Cal. App.4th 1301. See also "Computer Mapping (GIS) Systems," p. 74.

474 *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001, 1015–1016.

475 *Ibid.*

Chapter 5

Judicial Review and Remedies

Overview

The PRA establishes an expedited judicial process to resolve disputes over the public's right to inspect or receive copies of public records.[476] In contrast to other governmental transparency laws, such as the Brown Act,[477] the PRA establishes no criminal penalties for a local agency's noncompliance. Rather, the PRA is enforced primarily through an expedited civil judicial process in which any person may ask a judge to enforce their right to inspect or to receive a copy of any public record or class of public records.[478] Whether the PRA provides the exclusive judicial remedy for resolving a claim that a local agency has unlawfully refused to disclose a particular record or class of records remains unresolved.[479] This chapter discusses the special rules that apply to lawsuits brought to enforce the PRA.

The Trial Court Process

Under the PRA, any person may file a civil action for injunctive or declaratory relief, or writ of mandate, to enforce their right to inspect or receive a copy of any public record or class of public records.[480] Local agencies are "persons" under the PRA and may maintain an action to compel disclosure of records from another public entity.[481] While the PRA clearly provides specific relief when a local agency denies access or copies of public records, it does not preclude a taxpayer lawsuit seeking declaratory or injunctive relief to challenge the legality of a local agency's policies or practices

476 Gov. Code, §§ 7923.000, 7923.005 (formerly Gov. Code, § 6258); Gov. Code, §§ 7923.100, 7923.105, 7923.110, 7923.115, 7923.500 (formerly Gov. Code, § 6259).

477 Gov. Code, §§ 54950 *et. seq.*

478 Gov. Code, §§ 7923.000, 7923.005 (formerly Gov. Code, § 6258).

479 *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 66 fn. 2; *County of Santa Clara v. Superior Court* (2009) 171 Cal. App. 4th 119, 128, 130 (taxpayer lawsuit may be brough to challenge legality of entity's policies or practices for responding to public records requests generally).

480 Gov. Code, § 7923.000 (formerly Gov. Code, § 6258).

481 *Los Angeles Unified Sch. Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 771.

for responding to public records requests generally.[482] As a condition to obtaining an injunction, the party seeking injunctive relief may be required to post an undertaking in an amount determined by the court.[483]

A local agency may not commence an action for declaratory relief to determine its obligation to disclose records under the PRA.[484] The rationale for this rule is that allowing a local agency to seek declaratory relief to determine whether it must disclose records would require the person requesting documents to defend civil actions they did not commence and discourage them from requesting records.[485] That would frustrate the purpose of furthering the fundamental right of every person in the state to have prompt access to information in the possession of local agencies. However, agencies may seek injunctive relief to preclude review and dissemination of, and to recover, inadvertently released exempt records, including attorney-client and work-product privileged records.[486]

An action under the PRA may be filed in any court of competent jurisdiction, which typically is the superior court in the county where the records or some part of them are maintained.[487]

Timing

The PRA does not contain a specific time period in which the action or responsive pleadings must be filed. Therefore, any action must be filed in a manner consistent with traditional actions for injunctive or declaratory relief, or writ of mandate, and is subject to any limitations periods or equitable concepts, such as laches, applicable to those actions. In a typical action under the PRA, the parties will file written arguments with the court to explain why the records should be disclosed or can be withheld. The court will also hold a hearing to give the parties an opportunity to argue the case. The judge in each case will establish the deadlines for briefing the issues and for hearings with the object of securing a decision at the earliest possible time.[488]

Discovery

The PRA is considered a "special proceeding of a civil nature[,]" and as such, the Civil Discovery Act applies to actions brought under the PRA.[489] Any discovery sought must still, however, be relevant to the subject matter of the pending action and the trial court has the discretion to restrict discovery to that which is likely to aid in the resolution of the particular issues presented in the proceeding.

A local agency that receives a request for records that would traditionally be sought through a formal discovery mechanism must handle the request in a manner consistent with the PRA rather than pursuant to discovery statutes.[490] However, under the California Environmental Quality Act, a litigant may not use the PRA to avoid the statutory duty to pay for preparation of the administrative record.[491]

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482 *County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 130.

483 Code Civ. Proc. §529(a). See *Stevenson v. City of Sacramento* (2020) 55 Cal.App.5th 545 (Public Records Act litigants seeking an injunction are not exempt from requirement to post undertaking and that requirement is not an unlawful prior restraint under the First Amendment).

484 *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426.

485 *Id. at p. 423.*

486 *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176; *Newark Unified Sch. Dist. v. Superior Court* (2016) 245 Cal.App.4th 887.

487 Gov. Code, § 7923.100 (formerly Gov. Code, § 6259, subd. (a)).

488 Gov. Code, § 7923.005 (formerly Gov. Code, § 6258).

489 *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272.

490 *Bertoli v. City of Sebastopol* (2015) 233 Cal. App. 4th 353, 370–371.

491 *St. Vincent's v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1019, fn.9.

Burden of Proof

In general, a plaintiff bears the burden of proving the plaintiff made a request for reasonably identifiable public records to a local agency and the agency improperly withheld or failed to conduct a reasonable search for the requested records.[492] A local agency may assert, as affirmative defenses, and bears the burden of proving that: (i) a request was unclear and the agency provided adequate assistance to the requestor to identify records but was still unable to identify any records; (ii) the withholding was justified under the PRA;[493] or (iii) the local agency undertook a reasonable search for records but was unable to locate the requested records.[494]

In Camera Review

The judge must decide the case based on an *in camera* review of the record or records — that is, in the judge's chambers and out of the presence and hearing of others — (if such review is permitted by the rules of evidence),[495] the papers filed by the parties, any oral argument, and additional evidence as the court may allow.[496] However, a judge cannot compel *in camera* disclosure of records claimed to be protected from disclosure by the attorney-client privilege for the purpose of determining whether the privilege applies.[497]

Decision and Order

If the court determines, based upon a verified petition, that certain public records are being improperly withheld, the court will order the officer or person withholding the records to disclose the public record or show cause why he or she should not do so.[498] If the court determines the local agency representative was justified in refusing to disclose the record, the court shall return the record to the local agency representative without disclosing its content, together with an order supporting the decision refusing disclosure.[499] The court may also order some of the records to be disclosed while upholding the decision to withhold other records. In addition, the court may order portions of the records be redacted and compel disclosure of the remaining portions.

Reverse PRA Litigation

While there is no specific statutory authority for such an action, a person who believes their rights would be infringed by a local agency decision to disclose documents may bring a "reverse PRA action" to seek an order enjoining disclosure.[500] A records requester may join in a reverse PRA action as a real party or an intervener.[501]

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492 *Fredericks v. Superior Court* (2015) 233 Cal. App. 4th 209, 227 ["[A] person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies"], disapproved on other grounds at *Natl. Lawyers Guild v. City of Hayward* (2020) 9 Cal. 5th 488, 508 fn. 9 (disapproving Fredericks to the extent it suggested an agency can recover redaction costs); *American Civil Liberties Union of N. Cal. v. Superior Court* (2011) 202 Cal. App. 4th 55, 85 ['Government agencies are, of course, entitled to a presumption that they have reasonably and in good faith complied with the obligation to disclose responsive information."]

493 See, *e.g., Los Angeles Unified School Dist. v. Superior Court, supra,* 151 Cal.App.4th at p. 767.

494 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1420.

495 Evid. Code, § 915.

496 Gov. Code, § 7923.105 (formerly Gov. Code, § 6259, subd. (a)).

497 *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 737.

498 Gov. Code, § 7923.100 (formerly Gov. Code, § 6259, subd. (a)).

499 Gov. Code, § 7923.110 (formerly Gov. Code, § 6259, subd. (b)).

500 *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1264, 1267.

501 *Id.* at p. 1269.

> **▶ PRACTICE TIP:**
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> A local agency that receives a request for records that are or could be statutorily exempt from disclosure (under the PRA or otherwise) might consider notifying affected parties prior to disclosing the records. For example, "affected parties" would be individuals or organizations for whom disclosure could constitute an unwarranted intrusion of privacy if the requested documents contain potentially confidential information, such as trade secrets or confidential information of employees, contractors, or other third-party stakeholders. The notification prior to disclosing the records would allow the third parties to file a reverse PRA action to enjoin the local agency from disclosing the records.

A party bringing a reverse PRA action to prevent disclosure may be subject to paying the requestor's attorney fees under the private attorney general statute if the requestor prevails.[502] An agency, however, is not subject to paying the requestor's attorney fees in a reverse PRA action.[503]

Appellate Review

Petition for Review

The PRA establishes an expedited judicial review process. A trial court's order is not considered to be a final judgment subject to the traditional and often lengthy appeal process. In place of a traditional appeal, such orders are subject to immediate review through the filing of a petition to the appellate court for the issuance of an extraordinary writ.[504]

Because the trial court's decision is not a final judgment for which there is an absolute right of appeal, the appellate court may decline to review the case without a hearing or without issuance of a detailed written opinion.[505] However, the intent of substituting writ review for the traditional appeal process is to provide for expedited appellate review, not an abbreviated review. Therefore, an appellate court may not deny an apparently meritorious writ petition that has been timely presented and is procedurally sufficient merely because the petition presents no important issue of law or because it considers the case less worthy of its attention.[506] This manner of providing for appellate review through an extraordinary writ procedure rather than a traditional appeal has been held to be constitutional.[507]

Timing

A party seeking review of a trial court's order must file a petition for review with the appellate court within 20 days after being served with a written notice of entry of the order, or within such further time, not exceeding an additional 20 days, as the trial court may for good cause allow.[508] If the written notice of entry of the order is served by mail, the period within which to file the petition is increased by five days.[509]

502 *City of Los Angeles v. Metropolitan Water Dist.* (2019) 42 Cal.App.5th 290 (awarding attorney fees to newspaper that had requested records and intervened in case); *Pasadena Police Officers Ass'n v. City of Pasadena* (2018) 22 Cal.App.5th 147, 160 (same).

503 *National Conference of Black Mayors v. Chico Community Publ'g, Inc.* (2018) 25 Cal.App.5th 570.

504 Gov. Code, § 7923.500, subd. (a) (formerly Gov. Code, § 6259, subd. (c)). But see *Mincal Consumer Law Group v. Carlsbad Police Department* (2013) 214 Cal. App.4th 259, 265 (under limited circumstances, an appellate court may exercise its discretion to treat an appeal from a non-appealable order as a petition for writ relief).

505 Cal. Rule of Court, Rule 8.487(a)(4). See generally *Omaha Indem. Co. v. Sup. Ct. (Greinke)* (1989) 209 Cal.App.3d 1266, 1271-74 (summary denial without written opinion); *Lewis v. Sup. Ct. (Green)* (1999) 19 Cal.4th 1232, 1260 (summary denial without hearing).

506 *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 113–114.

507 *Id.* at p. 115.

508 Gov. Code, § 7923.500, subd. (b) (formerly Gov. Code, § 6259, subd. (c)).

509 Gov. Code, § 7923.500, subd. (c) (formerly Gov. Code, § 6259, subd. (c)).

Once a court of appeal accepts a petition for review, the appellate process proceeds in much the same fashion as a traditional appeal. Unless the parties stipulate otherwise, the appellate court will establish a briefing schedule and may set the matter for oral arguments once briefing is complete.

Requesting a Stay

If a party wishes to prevent the disclosure of records pending appellate review of the trial court's decision, then that party must seek a stay of the trial court's order or judgment.[510] In cases when the trial court's order requires disclosure of records prior to the time when a petition for review must be filed, the party seeking a stay may apply to the trial court for a stay of the order or judgment. Where there is sufficient time for a party to file a petition for review prior to the date for disclosure, that party may seek a stay from the appellate court. The trial and appellate courts may only grant a stay when the party seeking the stay demonstrates that: (1) the party will sustain irreparable damage because of the disclosure; and (2) it is probable the party will succeed on the merits of the case on appeal.[511]

Scope and Standard of Review

On appeal, the appellate court will conduct an independent review of the trial court's ruling, upholding the factual findings made by the trial court if they are based on substantial evidence.[512]

The decision of the appellate court, whether to deny review or on the merits of the case, is subject to discretionary review by the California Supreme Court through a petition for review.

Appeal of Other Decisions under the PRA

While the trial court's decision regarding disclosure of records is not subject to the traditional appeal process, other decisions of the trial court related to a lawsuit under the PRA are subject to appeal. Thus, a trial court's decision to grant or deny a motion for attorneys' fees and costs under the PRA is subject to appeal and is not subject to the extraordinary writ process.[513] Similarly, an award of sanctions in a public records case is subject to appeal rather than a petition for an extraordinary writ.[514]

Attorneys' Fees and Costs

Attorneys' fees may be awarded to a prevailing party in an action under the PRA. If the plaintiff prevails in the litigation, the judge must award court costs and reasonable attorneys' fees to the plaintiff.[515] A member of the public may be entitled to an award of attorneys' fees and costs even when he or she is not the named "plaintiff" in a lawsuit under the PRA, if the party is the functional equivalent of a plaintiff.[516] Records requesters that participate in a reverse-PRA lawsuit are not entitled to an award of attorneys' fees for successfully opposing such litigation.[517] Successful local agency defendants may obtain an award of attorneys' fees and court costs against an unsuccessful plaintiff only when the court finds the plaintiff's case was clearly frivolous.[518] Unless a plaintiff's case is "utterly devoid of merit or taken for

510 Gov. Code, § 7923.500, subd. (d) (formerly Gov. Code, § 6259, subd. (c)).

511 Gov. Code, § 7923.500, subd. (d) (formerly Gov. Code, § 6259, subd. (c)).

512 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336.

513 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1388.

514 *Butt v. City of Richmond* (1996) 44 Cal.App.4th 925, 929.

515 Gov. Code, § 7923.115, subd. (a) (formerly Gov. Code, § 6259, subd. (d)); *Garcia v. Governing Board of Bellflower Unified School District* (2013) 220 Cal.App.4th 1058, 1065; *Los Angeles Times v. Alameda Corridor Transportation Authority, supra,* 88 Cal.App.4th at p. 1385.

516 *Fontana Police Dep't. v. Villegas-Banuelos* (1999) 74 Cal.App.4th 1249, 1253.

517 *Marken v. Santa Monica-Malibu Unified School Dist., supra,* 202 Cal.App.4th at p. 1268.

518 Gov. Code, § 7923.115, subd. (b) (formerly Gov. Code, §6259, subd. (d)).

improper motive," a court is unlikely to find a plaintiff's case frivolous and award attorneys' fees to an agency.[519] Only one reported case has upheld an award of attorneys' fees to a local agency based on a frivolous request.[520]

Eligibility to Recover Attorneys' Fees

In determining whether a plaintiff has prevailed, courts have applied several variations of analysis similar to that used under the private attorney general laws, *i.e.*, whether the party has succeeded on any issue in the litigation and achieved some of the public benefits sought in the lawsuit. Some courts, however, have determined a plaintiff may still be a prevailing party entitled to attorneys' fees under the PRA even without a favorable ruling or other court action.[521] Trial courts have discretion to deny fees when a plaintiff obtains a result so minimal or insignificant as to justify a finding that the plaintiff did not prevail, which may occur when the requester obtains only partial relief.[522]

Generally, if a local agency makes a timely, diligent effort to respond to a vague document request, a plaintiff will not be awarded attorneys' fees as the prevailing party, even in litigation resulting in issuance of a writ.[523] However, where the court determines a local agency was not sufficiently diligent in locating all requested records and issues declaratory relief, stating there has in fact been a violation of the PRA, even if the records sought no longer exist and cannot be produced, the court may still award attorneys' fees on the basis of the statutory policies underlying the PRA.[524]

The trial court has significant discretion when determining the appropriate amount of attorneys' fees to award.[525] Any award of costs and fees must be paid by the agency, and must not become a personal liability of the agency employees or officials who decide not to disclose requested records.[526]

519 *Crews v. Willows Unified School Dist. et al.* (2013) 217 Cal.App.4th 1368.

520 *Butt v. City of Richmond, supra,* 44 Cal.App.4th at p. 932.

521 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 482–483; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 901–902.

522 *Riskin v. Downtown L.A. Prop. Owners Ass'n* (2022) 76 Cal.App.5th 438, 441, 446-449.

523 *Motorola Commc'n & Elecs., Inc. v. Dep't of Gen. Servs.* (1997) 55 Cal.App.4th 1340, 1350–51.

524 *Community Youth Athletic Center v. City of National City, supra,* 220 Cal.App.4th at p. 1446.

525 *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1394.

526 Gov. Code, § 7923.115, subd. (a) (formerly Gov. Code, § 6259, subd. (d)).

Chapter 6

Records Management

In addition to the PRA, other California laws support and complement California's commitment to open government and the right of access to public records. These laws include, among others, open meeting laws under the Ralph M. Brown Act, records retention requirements, and California and federal laws prohibiting the spoliation of public records that might be relevant in litigation involving the local agency. Proper records management policies and practices facilitate efficient and effective compliance with these laws.

Public Meeting Records

Under the Brown Act,[527] any person may request a copy of a local agency meeting agenda and agenda packet by mail.[528] If a local agency has an Internet website, the legislative body or its designee must email a copy of, or a website link to, the agenda or agenda packet if a person requests delivery by email.[529] If requested, the agenda materials must be made available in appropriate alternative formats to persons with disabilities.[530] If a local agency receives a written request to send agenda materials by mail, the materials must be mailed when the agenda is either posted or distributed to a majority of the agency's legislative body, whichever occurs first.[531] Requests for mailed copies of agenda materials are valid for the calendar year in which they are filed, but must be renewed after January 1 of each subsequent year.[532] Local agency legislative bodies may establish a fee for mailing agenda materials.[533] The fee may not exceed the cost of providing the service.[534] Failure of a requester to receive agenda materials is not a basis for invalidating actions taken at the meeting for which agenda materials were not received.[535]

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527 Gov. Code, § 54950.5 *et. seq.* See *Open and Public: A Guide to the Ralph M. Brown Act, available at* www.calcities.org/BrownActGuide.

528 Gov. Code, § 54954.1.

529 *Ibid.*

530 *Ibid.*

531 *Ibid.; see Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.

532 Gov. Code, § 54954.1.

533 *Ibid.*

534 *Ibid.*

535 *Ibid.*

Writings that are distributed to all or a majority of all members of a legislative body in connection with a matter subject to discussion or consideration at a public meeting of the local agency are public records subject to disclosure, unless specifically exempted by the PRA, and must be made available upon request without delay.[536] When non-exempt writings are distributed during a public meeting, in addition to making them 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 another person), they must be made available in appropriate alternative formats upon request by a person with a disability.[537] The local agency may charge a fee for a copy of the records; however, no surcharge may be imposed on persons with disabilities.[538] When records relating to agenda items are distributed to a majority of all members of a legislative body less than 72 hours prior to the meeting, the records must be made available for public inspection in a designated location at the same time they are distributed.[539] The address of the designated location shall be listed in the meeting agenda.[540] The local agency may also post the information on its website in a place and manner which makes it clear the records relate to an agenda item for an upcoming meeting.[541]

Maintaining Electronic Records

"Public records," as defined by the PRA, 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."[542] The PRA does not require a local agency to keep records in an electronic format. But, if a local agency has an existing, non-exempt public record in an electronic format, the PRA does require the agency make those records available in any electronic format in which it holds the records when requested.[543] The PRA also requires the local agency to provide a copy of such records in any alternative electronic format requested, if the alternative format is one the agency uses for itself or for provision to other agencies.[544] The PRA does not require a local agency to release a public record in the electronic form in which it is held if the release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.[545] Likewise, the PRA does not permit public access to records held electronically, if access is otherwise restricted by statute.[546]

536 Gov. Code, § 54957.5, subd. (a).

537 Gov. Code, § 54957.5, subd. (c).

538 Gov. Code, § 54957.5, subd. (d). *See* Chapter 3.

539 Gov. Code, § 54957.5, subds. (b)(1), (b)(2).

540 Gov. Code, § 54957.5, subd. (b)(2).

541 Gov. Code, § 54957.5, subd. (b)(2).

542 Gov. Code, § 7920.530 (formerly Gov. Code, § 6252, subd. (e)).

543 Gov. Code, § 7922.570, subd. (b)(1) (formerly Gov. Code, § 6253.9, subd. (a)(1)).

544 Gov. Code, § 7922.570, subd. (b)(2) (formerly Gov. Code, § 6253.9, subd. (a)(2)).

545 Gov. Code, §7922.580, subd. (c) (formerly Gov. Code, § 6253.9, subd. (f)).

546 Gov. Code, § 7922.580, subd. (d) (formerly Gov. Code, § 6253.9, subd. (g)).

▶ PRACTICE TIP:

Local agencies should consider adopting electronic records policies governing such issues as: what electronic records (e.g., emails, texts, and social media) and what attributes of the electronically stored information and communications are considered "retained in the ordinary course of business" for purposes of the PRA; whether personal electronic devices (such as computers, tablets, cell phones) and personal email accounts may be used to store or send electronic communications concerning the local agency, or whether the agency's devices must be used; and privacy expectations. Local agencies should consult with information technology officials to understand what information is being stored electronically and the technological limits of their systems for the retention and production of electronic records.

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy.[547] However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or production of the record would require data compilation, extraction, or programming.[548] Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.[549]

Metadata

Electronic records may include "metadata," or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when, or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. Although no provision of the PRA expressly addresses metadata, and there are no reported court opinions in California considering whether or to what extent metadata is subject to disclosure, other jurisdictions have held that metadata is a public record subject to disclosure, unless an exemption applies.[550] There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record's integrity.

Computer Software

The PRA permits government agencies to develop and commercialize computer software and to benefit from copyright protections for agency-developed software. Computer software developed by state or local agencies, including computer mapping systems, computer programs, and computer graphics systems, is not a public record subject to disclosure.[551] As a result, public agencies are not required to provide copies of agency-developed software pursuant to the PRA. The PRA authorizes state and local agencies to sell, lease, or license agency-developed software for

547 Gov. Code, § 7922.575, subd. (a) (formerly Gov. Code, § 6253.9, subd. (a)(2)).

548 Gov. Code. § 7922.575, subd. (b) (formerly Gov. Code, § 6253.9, subd. (b)).

549 Gov. Code, § 7922.580, subd. (a) (formerly Gov. Code, § 6253.9, subd. (c)).

550 *Lake v. City of Phoenix*, (Ariz. 2009) 218 P.3d 1004, 1008; *O'Neill v. City of Shoreline* (Wash. 2010) 240 P.3d 1149, 1152–1154; *Irwin v. Onondaga County* (N.Y. 2010) 895 N.Y.S.2d 262, 265.

551 Gov. Code, § 7922.585, subds. (a), (b) (formerly Gov. Code, § 6254.9, subds. (a), (b)).

commercial or noncommercial use.[552] The exception for agency-developed software does not affect the exempt status of records merely because it is stored electronically.[553]

Computer Mapping (GIS) Systems

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the local agency and the public. As with metadata, the PRA does not expressly address GIS information disclosure. However, the California Supreme Court has held, that while GIS software is exempt under the PRA, the data in a GIS file format is a public record, and data in a GIS database must be produced.[554]

Public Contracting Records

State and local agencies subject to the Public Contract Code that receive bids for construction of a public work or improvement, must, upon request from a contractor plan room service, provide an electronic copy of a project's contract documents at no charge to the contractor plan room.[555] The Public Contract Code does not define the term "contractor plan room," but the term commonly refers to a clearinghouse that contractors can use to identify potential bidding opportunities and obtain bid documents. The term may also refer to an online resource for a contractor to share plans and information with subcontractors.

Electronic Discovery

The importance of maintaining a written document retention policy is evident by revisions to the Federal Rules of Civil Procedure, and California's Civil Discovery Act and procedures, relative to electronic discovery.[556] Those provisions and discovery procedures require parties in litigation to address the production and preservation of electronic records. Those rule changes may require a local agency to alter its routine management or storage of electronic information, and illustrate the importance of having and following formal document retention policies.

Once a local agency knows or receives notice that information is relevant to litigation (e.g., a litigation hold notice or a document preservation notice), it has a duty to preserve that information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems (through a litigation hold) to preserve information relevant to the litigation and avoid the potential imposition of sanctions.

552 Gov. Code, § 7922.585, subd. (b) (formerly Gov. Code, § 6254.9, subd. (a)).

553 Gov. Code, § 7922.585, subd. (d) (formerly Gov. Code, § 6254.9, subd. (d)).

554 *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 170 See also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1323–1336.

555 Pub. Contract Code, §§ 10111.2, 20103.7.

556 Fed. Rules Civ. Proc., rule 26, 28 U.S.C.; Cal. Rules of Court, rule 3.724(8); Code Civ. Proc. §§ 2016.020, 2031.020–2031.320.

Record Retention and Destruction Laws

The PRA is not a records retention statute. The PRA does not prescribe what type of information a public agency may gather or keep, or provide a method for correcting records.[557] Its sole function is to provide access to public records.[558] Other provisions of state law govern retention of public records.[559]

Local agencies generally must retain public records for a minimum of two years.[560] However, some records may be destroyed sooner. For example, duplicate records that are less than two years old may be destroyed if no longer required.[561] Similarly, the retention period for "recordings of telephone and radio communications" is 100 days[562] and "routine video monitoring" need only be retained for one year, and may be destroyed or erased after 90 days if another record, such as written minutes, is kept of the recorded event. "Routine video monitoring" is defined as "video recording by a video or electronic imaging system designed to record the regular and ongoing operations of a [local agency] …, including mobile in-car video systems, jail observation and monitoring systems, and building security recording systems."[563] The Attorney General has opined that recordings by security cameras on public buses and other transit vehicles constitute "routine video monitoring."[564] Whether additional recording technology used for law and parking enforcement such as body cameras and Vehicle License Plate Recognition ("VLPR") systems also constitute routine video monitoring is an open question and may depend upon its use. While the technology is very similar to in-car video systems, recordings targeting specific activity may not be "routine." The retention statutes do not provide a specific retention period for e-mails, texts, or forms of social media.

By contrast, state law does not permit destruction of records affecting title to or liens on real property, court records, records required to be kept by statute, and the minutes, ordinances, or resolutions of the legislative body or city board or commission.[565] In addition, employers are required to maintain personnel records for at least three years after an employee's termination, subject to certain exceptions, including peace officer personnel records, pre-employment records, and where an applicable collective bargaining agreement provides otherwise.[566] Complaints and any reports or findings relating to those complaints must be retained for no less than five years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct.[567]

To ensure compliance with these laws, most local agencies adopt records retention schedules as a key element of a records management system.

557 *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661, 668.

558 *Ibid.*

559 For example, an agency cannot destroy records that qualify for inclusion in an administrative record in a writ proceeding. *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733.

560 Gov. Code, § 34090, subd. (d).

561 Gov. Code, § 34090.7.

562 Gov. Code, § 34090.6.

563 Gov. Code, §§ 34090.6, 34090.7.

564 85 Ops.Cal.Atty.Gen. 256, 258 (2002).

565 Gov. Code, § 34090, subds. (a), (b), (c) & (e).

566 Lab. Code, § 1198.5, subd. (c)(1).

567 Pen. Code, § 832.5.

Records Covered by the Records Retention Laws

There is no definition of "public records" or "records" in the records retention provisions governing local agencies.[568] The Attorney General has opined that the definition of "public records" for purposes of the records retention statutes is "a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept; or (2) because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference."[569] Under that definition, local agency officials retain some discretion concerning what agency records must be kept pursuant to state records retention laws. Similarly, the PRA allows for local agency discretion concerning what preliminary drafts, notes, or interagency or intra-agency memoranda are retained in the ordinary course of business.[570]

▶ PRACTICE TIP:

Though there is no definition of "records" for purposes of the retention requirements applicable to local agencies, the retention requirements and the disclosure requirements of the PRA should complement each other. Local agencies should exercise caution in deviating too far from the definition of "public records" in the PRA in interpreting what records should be retained under the records retention statutes.

568 64 Ops.Cal.Atty.Gen. 317, 323 (1981).

569 *Id.* at p. 324.

570 Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a). See "Drafts," p. 35.

Frequently Requested Information and Records

This table is intended as a general guide on the applicable law and is not intended to provide legal advice. The facts and circumstances of each request should be carefully considered in light of the applicable law. A local agency's legal counsel should always be consulted when legal issues arise.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
AGENDA MATERIALS DISTRIBUTED TO A LEGISLATIVE BODY RELATING TO AN OPEN SESSION ITEM	Yes	Gov. Code, § 54957.5. For additional information, see p. 71 of *"The People's Business: A Guide to the California Public Records Act," "the Guide."*
AUDIT CONTRACTS	Yes	Gov. Code, § 7928.700 (formerly Gov. Code, § 6253.31).
AUDITOR RECORDS	Yes, with certain exceptions	Gov. Code, § 36525(b).
AUTOMATED TRAFFIC ENFORCEMENT SYSTEM (RED LIGHT CAMERA) RECORDS	No	Veh. Code, § 21455.5(f)(1).
AUTOPSY REPORTS	No	Gov. Code, § 7923.600 (formerly Gov. Code, § 6254(f)); *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271.
CALENDARS OF ELECTED OFFICIALS	Perhaps not, but note that there is no published appellate court decision on this issue post- Prop. 59.[1]	See *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d. 1325 and *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469 for a discussion of the deliberative process privilege. For additional information, see p. 34 of the Guide.
CLAIMS FOR DAMAGES	Yes	*Poway Unified School District v. Superior Court* (1998) 62 Cal. App.4th 1496.
CORONER PHOTOS OR VIDEOS	No	Civ. Proc. Code, § 129.
DOG LICENSE INFORMATION	Unclear	See conflict between Health & Safety Code, § 121690(h) which states that license information is confidential, and Food and Agr. Code, § 30803(b) stating license tag applications shall remain open for public inspection.
ELECTION PETITIONS (INITIATIVE, REFERENDUM AND RECALL PETITIONS)	No, except to proponents if petition found to be insufficient	Gov. Code, § 7924.100-7924.110 (formerly Gov. Code, § 6253.5); Elec. Code, §§ 17200, 17400, and 18650; Evid. Code, § 1050. For additional information, see p. 37 of the Guide.
EMAILS AND TEXT MESSAGES OF LOCAL AGENCY STAFF AND/OR OFFICIALS	Yes	Emails and text messages relating to local agency business on local agency and/or personal accounts and devices are public records. Gov. Code, § 7920.530 (formerly Gov. Code § 6252(e)); *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608. For additional information, see pp. 12-14 of the Guide.
EMPLOYMENT AGREEMENTS/CONTRACTS	Yes	Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8). Gov. Code, § 53262(b). For additional information, see p. 57 of the Guide.
EXPENSE REIMBURSEMENT REPORT FORMS	Yes	Gov. Code, § 53232.3(e).
FORM 700 (STATEMENT OF ECONOMIC INTERESTS) AND CAMPAIGN STATEMENTS	Yes[2]	Gov. Code, § 81008.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
GEOGRAPHIC INFORMATION SYSTEM (GIS) MAPPING SOFTWARE AND DATA	No as to proprietary software. Yes as to GIS base map information.	Gov. Code, § 7922.585 (formerly Gov. Code, § 6254.9); 88 Ops. Cal.Atty.Gen. 153 (2005); *see Sierra Club v. Superior Court* (2013) 57 Cal.4th 157 for data as a public record; see also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301 for GIS basemap as public record; for additional information, see p. 16 of the Guide.
GRADING DOCUMENTS INCLUDING GEOLOGY REPORTS, COMPACTION REPORTS, AND SOILS REPORTS SUBMITTED IN CONJUNCTION WITH AN APPLICATION FOR A BUILDING PERMIT	Yes	89 Ops.Cal.Atty.Gen. 39 (2006); but see Gov. Code, § 7927.300 (formerly Gov. Code, § 6254(e)). For additional information, see p. 30 of the Guide.
JUVENILE COURT RECORDS	No	*T.N.G. v. Superior Court* (1971) 4 Cal.3d. 767; Welf. & Inst. Code, §§ 827 and 828. For additional information, see p. 44 of the Guide.
LEGAL BILLING STATEMENTS	Generally, yes, as to amount billed and/or after litigation has ended. No, if pending or active litigation and the billing entries are closely related to the attorney-client communication. For example, substantive billing detail which reflects an attorney's impressions, conclusions, opinions or legal research or strategy.	Gov. Code, § 7927.705 (formerly Gov. Code, § 6254(k)); Evid. Code, § 950, et seq.; *County of Los Angeles Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282; *Smith v. Laguna Sun Villas Community Assoc*. (2000) 79 Cal.App.4th 639; *United States v. Amlani,* 169 F.3d 1189 (9th Cir. 1999}. But see Gov. Code, § 7927.200 (formerly Gov. Code, § 6254(b)) as to the disclosure of billing amounts reflecting legal strategy in pending litigation. *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57 (Pending litigation exemption does not protect legal bills reflecting the hours worked, the identity of the person performing the work, and the amount charged from disclosure; only work product or privileged descriptions of work may be redacted). For additional information, see p. 33 of the Guide.
LIBRARY PATRON USE RECORDS	No	Gov. Code, §§ 7927.100, 7927.105 (formerly Gov. Code, §§ 6254(j), 6267). For additional information, see p. 40 of the Guide.
MEDICAL RECORDS	No	Gov. Code, § 7927.700 (formerly Gov. Code, § 6254(c)). For additional information, see p. 46 of the Guide.
MENTAL HEALTH DETENTIONS (5150 REPORTS)	No	Welf. & Inst. Code, § 5328. For additional information, see p. 44 of the Guide.
MINUTES OF CLOSED SESSIONS	No	Gov. Code, § 54957.2(a). For additional information, see p. 43 of *Open and Public: A Guide to the Ralph M. Brown Act*, available at www.calcities.org/BrownActGuide.
NOTICES/ORDERS TO PROPERTY OWNER RE: HOUSING/BUILDING CODE VIOLATIONS	Yes	Gov. Code, § 7924.700 (formerly Gov. Code, § 6254.7(c)). For additional information, see p. 1 of the Guide.
OFFICIAL BUILDING PLANS (ARCHITECTURAL DRAWINGS AND PLANS)	Inspection only. Copies provided under certain circumstances.	Health & Saf. Code, § 19851; see also 17 U.S.C. §§ 101 and 102. For additional information, see p. 30 of the Guide.
PERSONAL FINANCIAL RECORDS	No	Gov. Code, §§ 7470, 7471, 7473; see also Gov. Code, § 7925.005 (formerly Gov. Code, § 6254(n)). For additional information, see p. 46 of the Guide.
PERSONNEL		For additional information, see p. 52 of the Guide.
• **Employee inspection of own personnel file**	Yes, with exceptions.	For additional information, see pp. 29-31 of the Guide. Lab. Code, § 1198.5; Gov. Code, § 36501.5. For peace officers, see Gov. Code, § 3306.5. For firefighters, see Gov. Code, § 3256.5.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
• **Investigatory reports**	It depends.	*City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal. App.4th 1250; *Sanchez v. County of San Bernardino* (2009) 176 Cal. App.4th 516; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742.
• **Name and pension amounts of public agency retirees**	Yes. However, personal or individual records, including medical information, remain exempt from disclosure.	*Sacramento County Employees Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440; *San Diego County Employees Retirement Association v. Superior Court* (2011) 196 Cal.App.4th 1228; *Sonoma County Employees Retirement Assn. v. Superior Court* (2011) 198 Cal.App.4th 986.
• **Names and salaries (including performance bonuses and overtime) of public employees, including peace officers**	Yes, absent unique, individual circumstances. However, other personal information such as social security numbers, home telephone numbers and home addresses are generally exempt from disclosure per Gov. Code, § 6254(c).	*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court* (2007) 42 Cal.4th 319; *Commission on Peace Officers Standards and Training v. Superior Court* (2007) 42 Cal.4th 278.
• **Officer's personnel file, including internal affairs investigation reports**	No, except for specified allegations and/or findings.	With certain exceptions, peace officer personnel records, including internal affairs reports regarding alleged misconduct, are confidential. Pen. Code, §§ 832.7 and 832.8; Evid. Code, §§ 1043-1045; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411. For additional information, see p. 53 of the Guide.
• **Test Questions, scoring keys, and other examination data.**	No	Gov. Code, § 7929.605 (formerly Gov. Code, § 6254(g)).
POLICE/LAW ENFORCEMENT		For additional information, see p. 38 of the Guide.
• **Arrest Information**	Yes	Gov. Code, § 7923.610 (formerly Gov. Code, § 6254(f)(1)); *Kinney v. Superior Court* (2022) 77 Cal.App.5th 168; *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588.
• **Charging documents and court filings of the DA**	Yes	*Weaver v. Superior Court* (2014) 224 Cal.App.4th 746.
• **Child abuse reports**	No	Pen. Code, §11167.5.
• **Citizen complaint policy**	Yes	Pen. Code, § 832.5(a)(1).
• **Citizen complaints**	No	Pen. Code, § 832.5.
• **Citizen complaints – annual summary report to the Attorney General**	Yes	Pen. Code, § 832.5.
• **Citizen complainant information – names addresses and telephone numbers**	No	*City of San Jose v. San Jose Mercury News* (1999) 74 Cal.App.4th 1008. For additional information see p. 42 of the Guide.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
• **Concealed weapon permits and applications**	Yes, except for information that indicates when or where the applicant is vulnerable to attack and medical/psychological history	Gov. Code, § 7923.800 (formerly Gov. Code, § 6254(u)(1)); *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.
• **Contact information – names, addresses and phone numbers of crime victims or witnesses**	No	Gov. Code, § 7923.615 (formerly Gov. Code, § 6254(f)(2)). For additional information, see p. 42 of the Guide.
• **Criminal history**	No	Pen. Code, § 13300 et seq.; Pen. Code, § 11106 et seq.
• **Criminal investigative reports including booking photos, audio recordings, dispatch tapes, 911 tapes and in-car video**	No	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.
• **Crime reports**	Yes	Gov. Code, §§ 7923.600-7923.625, 7922.000 (formerly 6254(f), 6255).
• **Crime reports, including witness statements**	Yes, but only to crime victims and their representatives	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)). Gov. Code, § 13951.
Police/Law Enforcement, CONTINUED		
• **Elder abuse reports**	No	Welf. and Inst. Code, §15633
• **Gang intelligence information**	No	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)); 79 Ops.Cal.Atty Gen. 206 (1996).
• **In custody death reports to AG**	Yes	Gov. Code, § 12525
• **Juvenile court records**	No	*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767; Welf. & Inst. Code, §§ 827 and 828. For additional information, see p. 44 of the Guide.
• **List of concealed weapon permit holders**	Yes	Gov. Code, § 7923.800 (formerly Gov. Code, § 6254(u)(1)); *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.
• **Mental health detention(5150) reports**	No	Welf. & Inst. Code, § 5328. For additional information, see p. 44 of the Guide.
• **Names of officers involved in critical incidents**	Yes, absent unique, individual circumstances	*Pasadena Peace Officers Ass'n v Superior Court* (2015) 240 Cal. App.4th 268*; Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59; *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278; *New York Times v. Superior Court* (1997) 52 Cal.App.4th 97; 91 Ops. Cal.Atty.Gen. 11 (2008).
• **Official service photographs of peace officers**	Yes, unless disclosure would pose an unreasonable risk of harm to the officer	*Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695.
• **Peace officer's name, employing agency and employment dates**	Yes, absent unique, individual circumstances	*Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278.
• **Traffic accident reports**	Yes, but only to certain parties	Veh. Code, §§ 16005, 20012 [only disclose to those needing the information, such as insurance companies, and the individuals involved].

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
PUBLIC CONTRACTS		
• **Bid Proposals, RFP proposals**	Yes, except competitive proposals may be withheld until negotiations are complete to avoid prejudicing the public	*Michaelis v. Superior Court* (2006) 38 Cal. 4th 1065; but see Gov. Code, § 7922.000 (formerly Gov. Code, § 6255) and Evid. Code, § 1060. For additional information, see p. 59 of the Guide.
• **Certified payroll records**	Yes, but records must be redacted to protect employee names, addresses, and social security number from disclosure	Labor Code, § 1776.
• **Financial information submitted for bids**	Yes, except some corporate financial information may be protected	Gov. Code, §§ 7927.500, 7928.705, 7927.705, 7927.605, and 7922.000 (formerly Gov. Code, §§ 6254(a), (h), and (k), 6254.15, and 6255); *Schnabel v. Superior Court of Orange County* (1993) 5 Cal.4th 704, 718. For additional information, see p. 60 of the Guide.
• **Trade secrets**	No	Evid. Code, § 1060; Civ. Code, § 3426, et seq. For additional information, see p. 61 of the Guide.
PURCHASE PRICE OF REAL PROPERTY	Yes, after the agency acquires the property	Gov. Code, § 7275.
REAL ESTATE		For additional information, see p. 60 of the Guide.
• **Property information (such as selling assessed value, square footage, number of rooms)**	Yes	88 Ops.Cal.Atty.Gen. 153 (2005).
• **Appraisals and offers to purchase**	Yes, but only after conclusion of the property acquisition	Gov. Code, § 7928.705 (formerly Gov. Code, § 6254(h)). Note that Gov. Code, § 7267.2 requires release of more information to the property owner while the acquisition is pending.
REPORT OF ARREST NOT RESULTING IN CONVICTION	No, except as to peace officers or peace officer applicants	Lab. Code, § 432.7.
SETTLEMENT AGREEMENTS	Yes	*Register Division of Freedom Newspapers v. County of Orange* (1984) 158 Cal.App.3d 893. For additional information, see p. 49 of the Guide.
SOCIAL SECURITY NUMBERS	No	Gov. Code § 7922.200 (formerly Gov. Code § 6254.29).
SPEAKER CARDS	Yes	Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).
TAX RETURN INFORMATION	No	Gov. Code, § 7927.705 (formerly Gov. Code, § 6254(k)); Internal Revenue Code, § 6103.
TAXPAYER INFORMATION RECEIVED IN CONNECTION WITH COLLECTION OF LOCAL TAXES	No	Gov. Code, § 7925.000 (formerly Gov. Code, § 6254(i)). For additional information, see p. 61 of the Guide.
TEACHER TEST SCORES, IDENTIFIED BY NAME, SHOWING TEACHERS' EFFECT ON STUDENTS' STANDARDIZED TEST PERFORMANCE	No	Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/ RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
TELEPHONE RECORDS OF ELECTED OFFICIALS	Yes, as to expense totals. No, as to phone numbers called.	See *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.
UTILITY USAGE DATA	No, with certain exceptions.	Gov. Code, § 7927.410 (formerly Gov. Code, § 6254.16). For additional information, see p. 62 of the Guide.
VOTER INFORMATION	No	Gov. Code, § 7924.000 (formerly Gov. Code, § 6254.4). For additional information, see p. 36 of the Guide.
VOTER INFORMATION	No	Gov. Code, § 6254.4. For additional information, see p. 36 of the Guide.

1 *The analysis with respect to elected officials may not necessarily apply to executive officers such as City Managers or Chief Administrative Officers, and there is no case law directly addressing this issue.*

2 *It should be noted that these statements must be made available for inspection and copying not later than the second business day following the day on which the request was received.*

Revised August 2022

DISPOSITION OF FORMER LAW

Note. This table shows the proposed disposition of the following provisions of the California Public Records Act (Gov't Code §§ 6250- 6276.48), as that law will exist on January 1, 2020. Unless otherwise indicated, all statutory references are to the Government Code.

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6250-6276.48	7920.000-7930.215
6250	7921.000
6251	7920.000
6252(a)	7920.510
6252(b)	7920.515
6252(c)	7920.520
6252(d)	7920.525(a)
6252(e)	7920.530
6252(f)	7920.540
6252(g)	7920.545
6252.5	7921.305
6252.6	7927.420
6252.7	7921.310
6253(a)	7922.525
6253(a) 1st sent	7922.525(a)
6253(a) 2d sent	7922.525(b)
6253(b)	7922.530(a)
6253(c)	7922.535
6253(c) 1st, 4th sent	7922.535(a)
6253(c) 2d, 3d sent	7922.535(b)
6253(c) 5th sent	7922.535(c)
6253(d) 1st sent	7922.500
6253(d)(1)	7922.530(b)
6253(d)(2)	7922.530(c)
6253(d)(3)	7922.540(b)
6253(e)	7922.505
6253(f) 1st sent	7922.545(a)
6253(f) 2d sent	7922.545(b)
6253.1(a)-(c)	7922.600
6253.1(d)	7922.605
6253.2	7926.300
6253.21	7927.305
6253.3	7921.005
6253.31	7928.700
6253.4(a) 1st ¶	7922.630
6253.4(a) 2d ¶	7922.635
6253.4(b)	7922.640
6253.5	7924.100-7924.110
6253.5(a) 1st sent	7924.110(a)-(b)
6253.5(a) 2d sent	7924.110(c)
6253.5(b)	7924.110(d)
6253.5(c)	7924.100
6253.5(d)	7924.105
6253.6	7924.005
6253.8(a)-(e)	7924.900
6253.8(f)	not cont'd

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6253.9	7922.570-7922.580
6253.9 intro cl 1st part	7922.570(a)
6253.9 intro cl 2d part	7922.570(b)
6253.9(a)(1)	7922.570(b)
6253.9(a)(2) 1st sent	7922.570(b)
6253.9(a)(2) 2d sent	7922.575(a)
6253.9(b)	7922.575(b)
6253.9(c)	7922.580(a)
6253.9(d)	7922.570(c)
6253.9(e)	7922.580(b)
6253.9(f)	7922.580(c)
6253.9(g)	7922.580(d)
6253.10	7922.680
6254(a)	7927.500
6254(b)	7927.200
6254(c)	7927.700
6254(d)	7929.000
6254(e)	7927.300
6254(f)	7923.600-7923.625
6254(f) 1st sent	7923.600(a)
6254(f) 2d sent	7923.605(a)
6254(f) 3d sent	7923.605(b)
6254(f) 2d ¶	7923.600(b)
6254(f) 3d ¶	7923.610, 7923.615(a), 7923.620(a)
6254(f)(1)	7923.610
6254(f)(2)(A) 1st sent	7923.615(a)
6254(f)(2)(A) 2d, 3d sent	7923.615(b)
6254(f)(2)(B)	7923.615(c)
6254(f)(3) 1st, 2d sent	7923.620(a)
6254(f)(3) 3d sent	7923.620(b)
6254(f)(3) 4th sent	7923.620(c)
6254(f)(4)	7923.625
6254(g)	7929.605
6254(h)	7928.705
6254(i)	7925.000
6254(j)	7927.100
6254(k)	7927.705
6254 (l)	7928.000
6254(m)	7928.100
6254(n)	7925.005
6254(o)	7924.505
6254(p)(1)	7928.405
6254(p)(2)	7928.410
6254(q)(1)	7926.220(a)
6254(q)(2)	7926.220(b)
6254(q)(3)	7926.220(c)
6254(q)(4)	7926.220(d)
6254(r)	7927.000
6254(s)	7926.000
6254(t)	7926.210
6254(u)(1)	7923.800
6254(u)(2)-(3)	7923.805
6254(v)(1)	7926.225(a)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254(v)(2)	7926.225(b)
6254(v)(3)	7926.225(c)
6254(v)(4)	7926.225(d)
6254(w)	7926.235
6254(w)(1)	7926.235(a)
6254(w)(2)	7926.235(b)
6254(w)(3)	7926.235(c)
6254(x)	7925.010
6254(y)(1)	7926.230(a)
6254(y)(2)	7926.230(b)
6254(y)(3)	7926.230(c)
6254(y)(4)	7926.230(d)
6254(y)(5)	7926.230(e)
6254(z)	7923.700
6254(aa)	7929.200
6254(ab)	7929.205
6254(ab) 1st sent	7929.205(b)
6254(ab) 2d sent	7929.205(a)
6254(ab) 3d sent	7929.205(c)
6254(ac)	7926.100
6254(ad)	7929.400-7929.430
6254(ad)(1)	7929.400
6254(ad)(2)	7929.405
6254(ad)(3)	7929.410
6254(ad)(4)	7929.415
6254(ad)(5)	7929.420
6254(ad)(6)	7929.425
6254(ad)(7)	7929.430
6254 next-to-last ¶	7921.500
6254 last ¶ (unlabeled)	7926.200
6254.1(a)	7927.415
6254.1(b)	7927.405
6254.1(c)	7929.600
6254.2	7924.300-7924.335
6254.2(a)	7924.300
6254.2(b)	7924.305(a)
6254.2(c)	7924.305(b)
6254.2(d)	7924.305(c)
6254.2(e)	7924.305(d)
6254.2(f)	7924.305(f)
6254.2(g)	7924.335
6254.2(h)	7924.310(a)-(b)
6254.2(i)	7924.315
6254.2(j)	7924.320
6254.2(k)	7924.310(c)
6254.2(l)	7924.330
6254.2(m)	7924.305(e)
6254.2(n)	7924.325
6254.3	7928.300
6254.4	7924.000
6254.4.5	7923.750
6254.5	7921.505
6254.5 1st sent	7921.505(b)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254.5 2d sent	7921.505(a)
6254.5(a)-(i)	7921.505(c)
6254.6	7927.600
6254.7 (except (c))	7924.510
6254.7(a)	7924.510(a)
6254.7(b)	7924.510(b)
6254.7(c)	7924.700
6254.7(d) 1st sent	7924.510(c)
6254.7(d) 2d sent	7924.510(f)
6254.7(e)	7924.510(d)
6254.7(f)	7924.510(e)
6254.8	7928.400
6254.9	7922.585
6254.10	7927.005
6254.11	7924.500
6254.12	7929.005
6254.13	7929.610
6254.14(a)	7926.215
6254.14(a)(1)	7926.215(a)
6254.14(a)(2)	7926.215(b)
6254.14(a)(3)	7926.215(c)
6254.14(a)(4)	7926.215(d)
6254.14(a)(5)	7926.215(e)
6254.14(b)	7926.220(d), 7926.225(d), 7926.230(d)
6254.15	7927.605
6254.16	7927.410
6254.17	7923.755
6254.18	7926.400-7926.430
6254.18(a)	7926.405
6254.18(b)	7926.400
6254.18(b)(1)	7926.400(a)
6254.18(b)(2)	7926.400(b)
6254.18(b)(3)	7926.400(c)
6254.18(b)(4)	7926.400(d)
6254.18(c)	7926.410
6254.18(d)	7926.415
6254.18(d) 1st sent	7926.415(a)
6254.18(d) 2d sent	7926.415(c)
6254.18(d) 3d sent	7926.415(b)
6254.18(e)	7926.420
6254.18(f)	7926.425
6254.18(g)	7926.430
6254.19	7929.210
6254.20	7927.400
6254.21 (except (f))	7928.200-7928.230
6254.21(a)	7928.205
6254.21(b)	7928.210
6254.21(c)	7928.215-7928.225
6254.21(c)(1)	7928.215
6254.21(c)(1)(A)	7928.215(b)
6254.21(c)(1)(B)	7928.215(c)
6254.21(c)(1)(C)	7928.215(d)
6254.21(c)(1)(D)	7928.215(e)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254.21(c)(1)(E)	7928.215(a)
6254.21(c)(2)	7928.225
6254.21(c)(3)	7928.220
6254.21(d)	7928.230
6254.21(e)	7928.200(b)
6254.21(f)	7920.500
6254.21(g)	7928.200(a)
6254.22	7926.205
6254.22 1st sent	7926.205(a)
6254.22 2d sent	7926.205(b)
6254.22 3d & 4th sent	7926.205(c)
6254.23	7929.215
6254.24	7920.535
6254.25	7927.205
6254.26	7928.710
6254.26(a)	7928.710(b)
6254.26(b)	7928.710(c)
6254.26(c)	7928.710(a)
6254.27	7922.205
6254.28	7922.210
6254.29	7922.200
6254.30	7923.655
6254.30 1st sent	7923.655(a)
6254.30 2d sent	7923.655(b)
6254.33	7928.715
6254.35	7929.010
6255(a)	7922.000
6255(b)	7922.540(a)
6257.5	7921.300
6258 1st sent	7923.000
6258 2d sent	7923.005
6259 (except (c) 1st sent intro cl)	7923.100-7923.500
6259(a) 1st sent	7923.100
6259(a) 2d sent	7923.105
6259(b)	7923.110
6259(c) 1st sent intro cl	not cont'd
6259(c) remainder	7923.500
6259(d)	7923.115(a)-(b)
6259(e)	7923.115(c)
6260	7920.200
6261	7928.720
6262	7923.650
6263	7921.700
6264	7921.705
6265	7921.710
6267	7927.105
6268	7928.005, 7928.010
6268(a)	7928.005
6268(b)	7928.010(a)
6268(c)	7928.010(b)
6268.5	7928.015
6270	7921.010
6270.5	7922.700-7922.725

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6270.5(a) 1st sent	7922.710(a)
6270.5(a) 2d sent	7922.715(a)
6270.5(a) 3d sent	7922.715(b)
6270.5(a) 4th sent	7922.720(a), (b)
6270.5(b)	7922.725(a)
6270.5(c)(1)	7922.700(a)
6270.5(c)(2)	7922.705
6270.5(c)(3)	7922.700(b)
6270.5(d)	7922.725(b)
6270.5(e)	7922.720(c)
6270.5(f)	7922.710(b)
6270.6	7928.800
6270.7	7926.500
6275-6276.48	7930.000-7930.215
6275	7930.000
6276	7930.005
6276.01	7930.100
6276.02	7930.105
6276.04	7930.110
6276.06	7930.115
6276.08	7930.120
6276.10	7930.125
6276.12	7930.130
6276.14	7930.135
6276.16	7930.140
6276.18	7930.145
6276.22	7930.150
6276.24	7930.155
6276.26	7930.160
6276.28	7930.165
6276.30	7930.170
6276.32	7930.175
6276.34	7930.180
6276.36	7930.185
6276.38	7930.190
6276.40	7930.195
6276.42	7930.200
6276.44	7930.205
6276.46	7930.210
6276.48	7930.215

DERIVATION OF NEW LAW

Note. This table shows the derivation of each proposed provision in this recommendation. Unless otherwise indicated, all statutory references are to the Government Code.

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7920.000	6251
7920.005	new
7920.100	new
7920.105	new
7920.110	new
7920.115	new
7920.120	new
7920.200	6260
7920.500	6254.21(f)
7920.505	new
7920.510	6252(a)
7920.515	6252(b)
7920.520	6252(c)
7920.525(a)	6252(d)
7920.525(b)	new
7920.530	6252(e)
7920.535	6254.24
7920.540	6252(f)
7920.545	6252(g)
7921.000	6250
7921.005	6253.3
7921.010	6270
7921.300	6257.5
7921.305	6252.5
7921.310	6252.7
7921.500	6254 next-to-last ¶
7921.505	6254.5
7921.505(a)	6254.5 2d sent
7921.505(b)	6254.5 1st sent
7921.505(c)	6254.5(a)-(i)
7921.700	6263
7921.705	6264
7921.710	6265
7922.000	6255(a)
7922.200	6254.29
7922.205	6254.27
7922.210	6254.28
7922.500	6253(d) 1st sent
7922.505	6253(e)
7922.525	6253(a)
7922.525(a)	6253(a) 1st sent
7922.525(b)	6253(a) 2d sent
7922.530(a)	6253(b)
7922.530(b)	6253(d)(1)
7922.530(c)	6253(d)(2)
7922.535	6253(c)
7922.535(a)	6253(c) 1st, 4th sent

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7922.535(b)	6253(c) 2d, 3d sent
7922.535(c)	6253(c) 5th sent
7922.540(a)	6255(b)
7922.540(b)	6253(d)(3)
7922.540(c)	new
7922.545	6253(f)
7922.545(a)	6253(f) 1st sent
7922.545(b)	6253(f) 2d sent
7922.570-7922.580	6253.9
7922.570(a)	6253.9 intro cl 1st part
7922.570(b)	6253.9 intro cl 2d part, (a)(1), (a)(2) 1st sent
7922.570(c)	6253.9(d)
7922.575(a)	6253.9(a)(2) 2d sent
7922.575(b)	6253.9(b)
7922.580(a)	6253.9(c)
7922.580(b)	6253.9(e)
7922.580(c)	6253.9(f)
7922.580(d)	6253.9(g)
7922.585	6254.9
7922.600	6253.1(a)-(c)
7922.605	6253.1(d)
7922.630	6253.4(a) 1st ¶
7922.635	6253.4(a) 2d ¶
7922.640	6253.4(b)
7922.680	6253.10
7922.700-7922.725	6270.5
7922.700(a)	6270.5(c)(1)
7922.700(b)	6270.5(c)(3)
7922.705	6270.5(c)(2)
7922.710(a)	6270.5(a) 1st sent
7922.710(b)	6270.5(f)
7922.715(a)	6270.5(a) 2d sent
7922.715(b)	6270.5(a) 3d sent
7922.720(a), (b)	6270.5(a) 4th sent
7922.720(c)	6270.5(e)
7922.725(a)	6270.5(b)
7922.725(b)	6270.5(d)
7923.000	6258 1st sent
7923.005	6258 2d sent
7923.100-7923.500	6259 (except (c) 1st sent intro cl)
7923.100	6259(a) 1st sent
7923.105	6259(a) 2d sent
7923.110	6259(b)
7923.115(a)-(b)	6259(d)
7923.115(c)	6259(e)
7923.500	6259(c) (except obsolete intro cl)
7923.600-7923.625	6254(f)
7923.600(a)	6254(f) 1st sent
7923.600(b)	6254(f) 2d ¶
7923.605(a)	6254(f) 2d sent
7923.605(b)	6254(f) 3d sent
7923.610	6254(f) 3d ¶ (re 6254(f)(1)), 6254(f)(1)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7923.615(a)	6254(f) 3d ¶ (re 6254(f)(2)), 6254(f)(2(A) 1st sent
7923.615(b)	6254(f)(2(A) 2d, 3d sent
7923.615(c)	6254(f)(2(B)
7923.620(a)	6254(f) 3d ¶ (re 6254(f)(3)), 6254(f)(3) 1st, 2d sent
7923.620(b)	6254(f)(3) 3d sent
7923.620(c)	6254(f)(3) 4th sent
7923.625	6254(f)(4)
7923.630	new
7923.650	6262
7923.655	6254.30
7923.655(a)	6254.30 1st sent
7923.655(b)	6254.30 2d sent
7923.700	6254(z)
7923.750	6254.4.5
7923.755	6254.17
7923.800-7923.805	6254(u)
7923.800	6254(u)(1)
7923.805	6254(u)(2)-(3)
7924.000	6254.4
7924.005	6253.6
7924.100	6253.5(c)
7924.105	6253.5(d)
7924.110(a)-(b)	6253.5(a) 1st sent
7924.110(c)	6253.5(a) 2d sent
7924.110(d)	6253.5(b)
7924.300-7924.335	6254.2
7924.300	6254.2(a)
7924.305(a)	6254.2(b)
7924.305(b)	6254.2(c)
7924.305(c)	6254.2(d)
7924.305(d)	6254.2(e)
7924.305(e)	6254.2(m)
7924.305(f)	6254.2(f)
7924.310(a)-(b)	6254.2(h)
7924.310(c)	6254.2(k)
7924.315	6254.2(i)
7924.320	6254.2(j)
7924.325	6254.2(n)
7924.330	6254.2(l)
7924.335	6254.2(g)
7924.500	6254.11
7924.505	6254(o)
7924.510	6254.7 (except (c))
7924.510(a)	6254.7(a)
7924.510(b)	6254.7(b)
7924.510(c)	6254.7(d) 1st sent
7924.510(d)	6254.7(e)
7924.510(e)	6254.7(f)
7924.510(f)	6254.7(d) 2d sent
7924.700	6254.7(c)
7924.900	6253.8(a)-(e)
7925.000	6254(i)
7925.005	6254(n)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7925.010	6254(x)
7926.000	6254(s)
7926.100	6254(ac)
7926.200	6254 last ¶ (unlabeled)
7926.205	6254.22
7926.205(a)	6254.22 1st sent
7926.205(b)	6254.22 2d sent
7926.205(c)	6254.22 3d & 4th sent
7926.210	6254(t)
7926.215	6254.14(a)
7926.215(a)	6254.14(a)(1)
7926.215(b)	6254.14(a)(2)
7926.215(c)	6254.14(a)(3)
7926.215(d)	6254.14(a)(4)
7926.215(e)	6254.14(a)(5)
7926.220(a)	6254(q)(1)
7926.220(b)	6254(q)(2)
7926.220(c)	6254(q)(3)
7926.220(d)	6254(q)(4), 6254.14(b) (re 6254(q))
7926.225(a)	6254(v)(1)
7926.225(b)	6254(v)(2)
7926.225(c)	6254(v)(3)
7926.225(d)	6254(v)(4), 6254.14(b) (re 6254(v))
7926.230(a)	6254(y)(1)
7926.230(b)	6254(y)(2)
7926.230(c)	6254(y)(3)
7926.230(d)	6254(y)(4), 6254.14(b)(re 6254(y))
7926.230(e)	6254(y)(5)
7926.235	6254(w)
7926.235(a)	6254(w)(1)
7926.235(b)	6254(w)(2)
7926.235(c)	6254(w)(3)
7926.300	6253.2
7926.400-7926.430	6254.18
7926.400	6254.18(b)
7926.400(a)	6254.18(b)(1)
7926.400(b)	6254.18(b)(2)
7926.400(c)	6254.18(b)(3)
7926.400(d)	6254.18(b)(4)
7926.405	6254.18(a)
7926.410	6254.18(c)
7926.415	6254.18(d)
7926.415(a)	6254.18(d) 1st sent
7926.415(b)	6254.18(d) 3d sent
7926.415(c)	6254.18(d) 2d sent
7926.420	6254.18(e)
7926.425	6254.18(f)
7926.430	6254.18(g)
7926.500	6270.7
7927.000	6254(r)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7927.005	6254.10
7927.100	6254(j)
7927.105	6267
7927.200	6254(b)
7927.205	6254.25
7927.300	6254(e)
7927.305	6253.21
7927.400	6254.20
7927.405	6254.1(b)
7927.410	6254.16
7927.415	6254.1(a)
7927.420	6252.6
7927.500	6254(a)
7927.600	6254.6
7927.605	6254.15
7927.700	6254(c)
7927.705	6254(k)
7928.000	6254 (l)
7928.005-7928.010	6268
7928.005	6268(a)
7928.010(a)	6268(b)
7928.010(b)	6268(c)
7928.015	6268.5
7928.100	6254(m)
7928.200-7928.230	6254.21 (except (f))
7928.200(a)	6254.21(g)
7928.200(b)	6254.21(e)
7928.205	6254.21(a)
7928.210	6254.21(b)
7928.215-7928.225	6254.21(c)
7928.215	6254.21(c)(1)
7928.215(a)	6254.21(c)(1)(E)
7928.215(b)	6254.21(c)(1)(A)
7928.215(c)	6254.21(c)(1)(B)
7928.215(d)	6254.21(c)(1)(C)
7928.215(e)	6254.21(c)(1)(D)
7928.220	6254.21(c)(3)
7928.225	6254.21(c)(2)
7928.230	6254.21(d)
7928.300	6254.3
7928.400	6254.8
7928.405	6254(p)(1)
7928.410	6254(p)(2)
7928.700	6253.31
7928.705	6254(h)
7928.710(a)	6254.26(c)
7928.710(b)	6254.26(a)
7928.710(c)	6254.26(b)
7928.715	6254.33
7928.720	6261
7928.800	6270.6
7929.000	6254(d)
7929.005	6254.12

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7929.010	6254.35
7929.200	6254(aa)
7929.205	6254(ab)
7929.205(a)	6254(ab) 2d sent
7929.205(b)	6254(ab) 1st sent
7929.205(c)	6254(ab) 3d sent
7929.210	6254.19
7929.215	6254.23
7929.400-7929.430	6254(ad)
7929.400	6254(ad)(1)
7929.405	6254(ad)(2)
7929.410	6254(ad)(3)
7929.415	6254(ad)(4)
7929.420	6254(ad)(5)
7929.425	6254(ad)(6)
7929.430	6254(ad)(7)
7929.600	6254.1(c)
7929.605	6254(g)
7929.610	6254.13
7930.000-7930.215	6275-6276.48
7930.000	6275
7930.005	6276
7930.100	6276.01
7930.105	6276.02
7930.110	6276.04
7930.115	6276.06
7930.120	6276.08
7930.125	6276.10
7930.130	6276.12
7930.135	6276.14
7930.140	6276.16
7930.145	6276.18
7930.150	6276.22
7930.155	6276.24
7930.160	6276.26
7930.165	6276.28
7930.170	6276.30
7930.175	6276.32
7930.180	6276.34
7930.185	6276.36
7930.190	6276.38
7930.195	6276.40
7930.200	6276.42
7930.205	6276.44
7930.210	6276.46
7930.215	6276.48

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Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg

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About the Author

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.

Table of Contents

About the Author ii

Introduction 2

Establishing a Quorum 2

The Role of the Chair 2

The Basic Format for an Agenda Item Discussion 2

Motions in General 3

The Three Basic Motions 3

Multiple Motions Before the Body 4

To Debate or Not to Debate 4

Majority and Super-Majority Votes 5

Counting Votes 5

The Motion to Reconsider 6

Courtesy and Decorum 7

Special Notes About Public Input 7

Introduction

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

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

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

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

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

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

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

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

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

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

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member's desired approach with the words "I move … "

A typical motion might be: "I move that we give a 10-day notice in the future for all our meetings."

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion,** for example, "A motion at this time would be in order."
2. **Suggesting a motion to the members of the body,** "A motion would be in order that we give a 10-day notice in the future for all our meetings."
3. **Making the motion.** As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

"Motions to amend" and "substitute motions" are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a "motion to amend" or a "substitute motion" is left to the chair. So if a member makes what that member calls a "motion to amend," but the chair determines that it is really a "substitute motion," then the chair's designation governs.

A "friendly amendment" is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, "I want to suggest a friendly amendment to the motion." The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

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

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

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

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

To Debate or Not to Debate

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

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

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

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

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

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

Motion to limit debate. The most common form of this motion is to say, "I move the previous question" or "I move the question" or "I call the question" or sometimes someone simply shouts out "question." As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a "request" rather than as a formal motion. The chair can simply inquire of the body, "any further discussion?" If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the "question" as a formal motion, and proceed to it.

When a member of the body makes such a motion ("I move the previous question"), the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item.* This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

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

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

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

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

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it's pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the "no" votes and double that count to determine how many "yes" votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote "no" then the "yes" vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote "abstain" or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of "those present" then you treat abstentions one way. However, if the rules of the body say that you count the votes of those "present and voting," then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are "present and voting."

Accordingly, under the "present and voting" system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are "present"), but you treat the abstention votes on the motion as if they did not exist (they are not "voting"). On the other hand, if the rules of the body specifically say that you count votes of those "present" then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like "no" votes.

How does this work in practice?
Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are "present and voting." If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three "yes," one "no" and one "abstain" also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members "present." Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a "no" vote. Accordingly, if the votes were three "yes," one "no" and one "abstain," then the motion fails. The abstention in this case is treated like a "no" vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an "abstention" vote? Any time a member votes "abstain" or says, "I abstain," that is an abstention. However, if a member votes "present" that is also treated as an abstention (the member is essentially saying, "Count me for purposes of a quorum, but my vote on the issue is abstain.") In fact, any manifestation of intention not to vote either "yes" or "no" on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote "absent" or "count me as absent?" Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually "absent." That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

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

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

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

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

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

Courtesy and Decorum

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

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

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

Can a member of the body interrupt the speaker? The general rule is "no." There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, "point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be, "point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

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

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

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

Special Notes About Public Input

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

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

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

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

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