



**CITY OF ORLAND**

**COMMISSIONER GUIDE**

## **ORLAND CITY COMMISSIONS**

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## **SERVING ON A CITY ADVISORY COMMISSION**

Thank you for your willingness to serve as a member of a City of Orland Commission. Advisory bodies play an important role in city governance by assisting the City Council in addressing specific issues in detail, lending professional expertise, and facilitating community policy-making. Your participation is deeply appreciated by the City Council, by city staff, and by your community. The vitality and strength of our community results from the willingness of people like you to serve.

## **COMMISSION MEMBERSHIP AND SELECTION PROCESS**

After application, interview and selection by interview panel, Mayor makes appointment, with Council confirmation by majority vote. If the Council does not confirm the appointment, Mayor appoints another candidate pending Council confirmation, until the position is filled. Appointments are made for specified terms, which for most appointments are two years. In some instances, declarations of property and interests may be required by the Fair Political Practices Commission (Statement of Economic Interests - Form 700).

## **RESIGNATIONS/VACANCIES**

If a member is unable to continue serving because of health, business requirements or personal reasons, a letter of resignation should be submitted to the City Council. Missing three regularly scheduled meetings in a row renders the Commission seat vacated. Appointments made in the middle of a term are for the *unexpired* portion of that term.

## **COMMISSION OFFICERS**

Each year, every commission will elect from its membership a chairperson and a vice chairperson who serve at the pleasure of the commission. The term is for one year. It is the chairperson's duty to preside over meetings and to present such reports as are required. The vice chairperson acts in this capacity when the chairperson is not available. The chair and the vice chair serve at the pleasure of the commission.

## **RESPONSIBILITIES/ AUTHORITY**

Know the responsibilities of your commission, as well as the limitations of your individual authority. As a member of an advisory body you will be asked to provide recommendations to the City Council about specific issues. Keep in mind that your appointment does not empower you to supervise City operations or give direction to City staff.

## PREPARATION FOR MEETINGS

### AGENDAS

Each commission has a City department head responsible for preparing an agenda in consultation with the Chair and distributing the agenda and supporting documents prior to each meeting. Items to be heard before a commission should be submitted to the City staff well enough in advance to assure placement on the desired agenda.

If an advisory body member or staff intends to bring up an item for discussion or action, the item must be included on the agenda. Members of advisory bodies may request that the Chair or staff place any action item within the purview of the commission on a future agenda; this agendaing should be agreeable to the Commission. Information items placed on an agenda may not be acted upon at the meeting. Any member may, however, request that the informational item be placed on a future agenda for action. The agenda shall be posted at least 72 hours prior to any meeting in a place visible to the public.

Only those items appearing on an agenda may be considered at each meeting. However, in cases of extreme emergency unanimous consent of all members present may allow other matters to be introduced and action taken, if urgency exists and delay would be harmful to the public interest.

### PREPARATION

Be prepared. Thoroughly review the agenda packet, including agenda reports, and any other materials *before* the meeting. The issues that come before commissions are important to the community as a whole and demand your consistent attention. In agreeing to serve on an advisory body, you make a commitment to put in the time required to prepare fully for each meeting. Understand what action you are being called upon to take for each particular agenda item. If you have questions about the agenda or agenda report, contact the City department head before the meeting to clarify questions or request further information.

### OBJECTIVITY

Keep an open mind. An objective, balanced, and receptive approach will help you assess the facets of a given issue, and evaluate new ideas. When receiving written and oral public testimony it will be necessary to discern between fact and opinion, as well as between those concerns which are relevant and those which are secondary to the issue at hand. Keeping an open mind will make it easier for you to understand all sides of an issue before you make a judgment or take a position. If you are unsure about something *during* the meeting, ask for clarification. Review each agenda item ahead of the meeting to determine if you may have a conflict due to property or monetary interests.

## MEETING MANAGEMENT

The City of Orland is committed to operating efficient, effective and accessible government operations. The following techniques you can use to ensure that your commission meetings are efficiently run and give all residents an equal opportunity to address the issues.

### A. PROCEEDINGS

1. Start meetings on time. Keep the agenda in mind in order to give each item the appropriate time.
2. Announce at the start of a meeting if the order of agenda items is to be rearranged for convenience, for response to those attending only for certain items, or for better pacing of the agenda.
3. Let the Chair run the meeting.
4. Be fair, impartial, and respectful of the public, staff, and each other. Give your full attention when others speak.
5. Learn to trust your own good judgment on decisions.
6. Remember that people may be attending a meeting for the first time, and may be unfamiliar with your procedures. In your discussion, either avoid or explain technical terms or verbal shorthand.
7. Listen to audience concerns. Don't engage in side conversations or otherwise be distracted during public testimony. The opportunity for public testimony is central to the strength of democracy, and is therefore encouraged. Active listening, however, does not mean engaging the public in debate. Your response is appropriately saved for after the public testimony is closed.
8. Close the public testimony before you begin serious deliberation on an issue.
9. Sometimes questions can most effectively focus discussion and direct decision-making. For example,

#### *For staff:*

- What is the history behind this item?
- What are the benefits and drawbacks?
- What other alternatives did you consider?

#### *For other advisory body members:*

- What do you think about this item?
- What have you heard from the residents?
- What would it take for you to support this?

#### *For the public (at a hearing):*

- What are your concerns?
- How will this proposal affect you?
- What specific, constructive, alternatives can you recommend?

*For yourself:*

- What are we trying to accomplish?
  - What are the long-range interests of the community?
  - What guidance can be found in our foundational documents?
    - Orland Municipal Code
    - Budget
    - General Plan
    - Specific Plans
    - Council Goals
    - Council and Commissions
    - Brown Act
10. Often you must balance multiple views, neither favoring nor ignoring one individual or group over another. Your obligation is to represent a broad-based view of the community's long-range interests.
  11. Remember that your commission exists to make recommendations. It is not simply a discussion group or debating society, nor can your commission obligate the City.
  12. Endeavor to end meetings within two (2) hours.
  13. Meeting Types  
Commissions may meet in different types of meeting formats including the conventional public meeting, and study sessions. Please contact your staff representative for a detailed explanation of these formats and when they are appropriate.

D. BASIS FOR YOUR DECISION

1. Commission decisions should be based principally on the information presented to you in the open public meeting process. If you collect pertinent information outside of the public process through a meeting with stakeholders or site visits, you should share that information with your fellow commissioners in the public meeting. This sharing of information will ensure that other commissioners and members of the public have a better understanding of the rationale for your decision.
2. Commissioners are free to meet or refuse to meet with residents, resident groups, developers or prospective contractors or any persons outside of the public meeting process concerning issues before the commission. If you meet with any individuals outside of the public meeting you should disclose that in

the public meeting to again ensure that everybody is aware of the facts and have similar information up on which to base their decision.

## **COMMISSION ROLES AND RELATIONSHIPS**

### **COUNCIL-COMMISSION RELATIONSHIP**

The primary purpose of all advisory bodies is to provide judicious advice to the City Council, the elected policy-making body of the City. The advisory body's role can include hearing public testimony on the Council's behalf, building community consensus for proposals or projects, reviewing written material, facilitating study of critical issues, guiding the implementation of new or regulating established programs, assessing the alternatives regarding issues of community concern, and ultimately forwarding recommendations to the Council for consideration.

There are times when the advisory body's recommendation will not be sustained or will be modified by the City Council. It is important to recognize this not as a rejection of the integrity of the recommendation, but as an inevitable part of the process of community decision-making. It must be remembered that final authority and responsibility for public policy and public funds decisions rests with the City Council.

The Council has appointed commissioners and board members as advisors to them. This underlying philosophy makes it improper for an individual commission member to try to persuade the Council into the acceptance of a recommendation other than that voted by the majority. The role of a commission is to assist the City Council in the formation of policy, having been created for the purpose of advising, being a guide to public opinion, and promoting specific projects in the community at large.

### **STAFF-COMMISSION RELATIONSHIP**

Staff is assigned by the City Manager to assist and act in a technical advisory capacity to the commissions. It is not expected that every staff recommendation will be followed; however, because of the staff's technical knowledge, consideration should be given to their recommendation.

Just as the commission is held accountable to the City Council, so is the staff to the City Manager. After the staff makes a report or recommendation to a commission (which recommendation may or may not be followed), they are at liberty to make the same recommendation to the City Council through the City Manager, even though the commission may have taken a different position.

The staff has been employed by the manager to provide technical guidance. Staff members make objective recommendations without consideration of personal or political consequences. Failure of a staff member to provide expected or promised service to the commission is basis for complaint to be brought to the attention of the City Manager. Since staff personnel are directly responsible to the City Manager, it is his responsibility alone to allocate their time and resources in the interest of the total city government.

Both advisory body and staff are motivated by the shared goal of furthering the City's best interests. Yet while the goal is shared, there are times when the approach and responsibility toward implementing the goal can be different. The interaction need never be adversarial, but rather can promote respect for different perspectives, and appreciation for each other's strengths.

Since the city staff works for and is accountable to the City Manager, commission members should not attempt to direct or decide the priority of work for departments or individual staff persons. Commissions should, however, set priorities for their own agendas in order that staff may best use the time available for the advisory body.

#### STAFF RESPONSIBILITIES

Important staff responsibilities include:

- Being informed about the latest developments in their field.
- Providing background and expressing views to the advisory body on important issues.
- Providing administrative support, including agenda preparation and taking of minutes at meetings.
- Maintaining a professional position on all topics.
- Helping the commission to stay on track and focused.
- Interpreting City Council, City department, and relevant state, federal, and international actions and policies.
- Alerting advisory body members of possible detrimental actions.
- Presenting commission recommendations to the City Council.
- Describing precedents or operating procedures which affect the decision.
- Implementing City Council policies and City Manager directives.

#### **IMPOSED RESTRAINTS**

Certain limitations have been placed upon the powers of both the City Council and its appointed commissions by both statutory and case law. In certain instances, application of these restraints may be crucial in the governmental process. In instances of doubt, the City Attorney's opinion should be sought.

#### CONFLICT OF INTEREST

As specified in state law, it is illegal for a commission member to have an interest in any contract, sale, purchase, finding or transaction in which the member is involved in an official capacity. Conflict of interest may disqualify the commission member and invalidate any commission action where such conflict exists. Any interest, whether personal, private, general or sentimental that would tempt a commissioner to act in any manner other than the best public interest should be examined and official action accordingly restricted. An interest that is common to all similarly situated persons is not disqualifying to an action.

## PUBLIC RECORDS LAWS

The Government Code of the State of California provides that all official records of the city are open to inspection to any interested citizen at reasonable times. Exceptions to this law are only those records specified in the act, records relative to legal action in which the city is a party, and records the disclosure of which would not be in the public interest. All commission minutes and supporting documents are public records and must be disclosed.

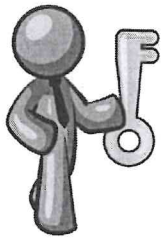
## TRANSPARENCY - THE BROWN ACT

The Ralph M. Brown Act is law which provides that no city commission shall hold any meeting at which action is taken other than at a duly called and regularly held meeting, notice of which is provided by either resolution or ordinance or by adjournment of a prior meeting. A "Meeting" takes place whenever a quorum is present and official business is considered. An agenda for each meeting must be posted at least 72 hours in advance. Commissioners are permitted to socialize in a non-meeting setting but must refrain from discussing any commission business.

Care should be taken to make sure that if a quorum of a commission is gathered at a public or private place, no public business is discussed and that the gathering will not be interpreted as a meeting.

## CONFLICT OF INTEREST CODE: DISCLOSURE REQUIREMENTS

Individuals serving on the Arts Commission, Economic Development Commission, Parks and Recreation Commission and Planning Commission must file a Statement of Economic Interest with the City Clerk to disclose personal interests in investments, real property and income. This is done within 30 days of appointment date and annually thereafter. The Conflict of Interest Code has been established and adopted by the City Council pursuant to the California Fair Political Practices Act (Government Code Section 87300 et seq.). Copies of the code are available from the City Clerk.



# Ethics Law Principles for Public Servants:

## KEY THINGS TO KNOW

*Note that the following are not statements of law, but rather principles the law is designed to achieve. The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws. If an issue arises under these principles, public officials should consult agency counsel.*

### Personal Financial Gain Laws

Generally speaking, California law says public officials:

- » Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- » Must disclose their financial interests to the public.
- » Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests.
- » Cannot have an interest in a contract made by their agency.
- » Cannot be involved in agency decisions that affect an official's future employer.
- » Cannot lobby their agency for pay for a year following their departure from the agency.

### Perk Issues: Including Compensation, Use of Public Resources and Gift Laws

Generally speaking, California law says public officials:

- » Receive limited compensation for their service to the public.
- » Cannot receive compensation for speaking, writing an article or attending a conference.
- » Are reimbursed for only those expenses allowed in agency expense reimbursement policies because those expenses have a demonstrable public purpose and necessity.
- » Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- » Cannot send mass mailings at public expense.
- » Cannot make gifts of public resources or funds.

For more information on these principles, see [www.ca-ilg.org/EthicsLaws](http://www.ca-ilg.org/EthicsLaws).

- » Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$440 (2013-14 proposed) from a single source in a given year.
- » May only accept free trips and travel expenses under limited circumstances.
- » May not accept free or discounted transportation from transportation companies.
- » May not use campaign funds for personal benefits not directly related to a political, legislative or governmental purpose.

### Transparency Laws

Generally speaking, California law says public officials:

- » Disclose their economic interests when they take office, annually while they are in office and when they leave office. These economic interests include such kinds of interests as: sources of income, property ownership, investments, certain family members' interests, business interests, loans, contracts and gifts received.
- » Disclose information about who has agreed to commit significant resources (\$5,000 or more) to legislative, governmental or charitable purposes at an elected official's request.
- » Disclose campaign contributions.
- » Conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- » Allow the public to participate in meeting, listenening to the public's views before decisions are made.
- » Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- » Disclose gifts given to the public agency and how they are ultimately used.

### Fair Process Laws and Merit-Based Decision-Making

Generally speaking, California law says public officials:

- » Cannot receive loans from those within the agency or with whom the agency contracts; loans from others must meet certain requirements.
- » Cannot engage in vote-trading.
- » Have a responsibility to assure fair and competitive agency contracting processes.
- » Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- » Must conduct public hearings in accordance with fair process principles.
- » Cannot participate in decisions that will benefit their immediate family (spouse or domestic partner and dependent children).
- » Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- » Cannot participate in entitlement proceedings—such as land use permits—involving campaign contributors (does not apply to elected bodies).
- » Cannot solicit campaign contributions of more than \$250 from permit applicants while an application is pending and for three months after a decision (if sitting on an appointed body).
- » Cannot solicit agency employee support for their political causes.
- » Cannot retaliate against those who whistle-blow.

## Public Official's Conflict of Interest Checklist

### KEY CONCEPTS

- ✓ A public agency's decision should be based solely on what best serves the public's interests.
- ✓ The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- ✓ Having a conflict of interest does not imply that a public official has done anything wrong; it just means that the official has financial or other disqualifying interests.
- ✓ Violating the conflict of interest laws could lead to monetary fines and criminal penalties. Don't take that risk.

### BASIC RULE

A public official may not participate in a decision – including trying to influence a decision – if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

### WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. A public official should talk with agency counsel 1) early and often, 2) when an action by the public agency, 3) may affect (positively or negatively), 4) any of the following:

- ✓ **Income.** Any source of income of \$500 or more (including promised income) during the prior 12 months for the official or official's spouse/domestic partner.
- ✓ **Business Management or Employment.** An entity for which the official serves as a director, officer, partner, trustee, employee, or manager.
- ✓ **Real Property.** A direct or indirect interest in real property of \$2000 or more that the official or official's immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are located within 500 feet of the subject of the decision.
- ✓ **Gift Giver.** A giver of a gift of \$440 (2013-14 proposed amount) or more to the official in the prior 12 months, including promised gifts.
- ✓ **Lender/Guarantor.** A source of a loan (including a loan guarantor) to the official.

- ✓ **Personal Finances.** The official or official's immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.
- ✓ **Contract.** A contract that the agency is considering entering into, in which the official or a member of the official's family may have an interest (direct or indirect).
- ✓ **Business Investment.** An interest in a business that the official or the official's immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth \$2000 or more.
- ✓ **Related Business Entity.** An interest in a business that is the parent, subsidiary or is otherwise related to a business where the official:
  - Has a direct or indirect investment worth \$2000 or more; or
  - Is a director, officer, partner, trustee, employee, or manager.
- ✓ **Business Entity Owning Property.** A direct or indirect ownership interest in a business entity or trust of the official's that owns real property.
- ✓ **Campaign Contributor.** A campaign contributor of the official (applies to appointed decision-making bodies only).
- ✓ **Other Personal Interests and Biases.** The official has important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on the official's ability to make a fair decision.

### WHAT WILL HAPPEN NEXT?

Agency counsel will advise the official whether 1) the official can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in.

### EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Officials should ask themselves whether members of the public will question whether officials should act solely in the public's interest. If they might, officials should consider excusing themselves voluntarily from that particular decision-making process.

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## Beyond the Law: Ethics and Values

- » Ethics is what one ought to do in a given situation. It's the kind of conduct that would make the world a better place if everyone engaged in it.
- » The law provides only minimum standards for ethical conduct. Just because a course of action is legal, doesn't make it what one ought to do.
- » What one ought to do is typically tied to a series of values:
  - Trustworthiness      – Compassion
  - Respect                – Loyalty
  - Responsibility        – Fairness

For more information on this topic, see  
[www.ca-ilg.org/LeadingValues](http://www.ca-ilg.org/LeadingValues).

*The Institute is grateful to the following firms for their support for the institute's work in public service ethics:*

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Meyers Nave  
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The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties.

Its mission is to promote good government at the local level.

The Institute's current program areas include:

- » Local Government 101
- » Public Engagement
- » Public Service Ethics
- » Sustainability

### **Ethics Law Principles for Public Servants: Key Things To Know**

[www.ca-ilg.org/EthicsPrinciples](http://www.ca-ilg.org/EthicsPrinciples)  
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The

# ABCs

## of Open Government Laws

The underlying philosophy of the open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government.

This concept of governmental transparency is so important to the public that some 83 percent of voters supported adding it to California's constitution by adopting Proposition 59 in 2004.

California's open government laws require public officials to:

**A**

Conduct meetings of public bodies openly, except for limited circumstances under which the law allows the public's business to be conducted privately in closed sessions.

**B**

Allow the public to participate in meetings of public bodies through a public comment process.

**C**

Allow inspection and copying of public records, except when non-disclosure is authorized by law.

This pamphlet summarizes these three requirements in general terms.

Local officials are also encouraged to consult with their agency attorneys for information about how these requirements apply in any given situation or more information about this area of the law.

The Institute is able to make this resource available to local officials and others as a result of much appreciated financial support from:



**RICHARDS | WATSON | GERSHON**  
ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

The Institute is grateful for this firm's ongoing commitment to public service ethics and public service ethics education.

All decisions regarding the final content of this pamphlet were the Institute's.

**A**

## Conducting the Public's Business in Public

### General Rules

- Elected and most appointed local-agency bodies – which include many advisory committees – must conduct their business in open and public meetings.
- A “meeting” is any situation involving a majority of a public body in which agency business is transacted or discussed. In other words, a majority of the body cannot talk privately about a matter of agency business no matter how the communication occurs, whether by telephone or e-mail, or at a local coffee shop.
- The public must be informed of 1) the time and place of and 2) the issues to be addressed at each meeting. In general, public officials may only discuss and act on items included on the posted agenda for a meeting. The agenda must be posted at least 72 hours in advance of a regular meeting and written in a way that informs people of what business will be discussed. Members of the public may request a copy of the agenda packet be mailed to them at the time the agenda is posted or upon distribution to the governing body. Many local agencies also post these materials on their websites. And/or maintain e-mail lists to make agendas available.

### Key Things to Know

- **Advisory Bodies.** Advisory bodies formally created by the governing body are subject to the open meeting laws. In some cases, committees of less than a quorum of the public body are also subject to these laws.
- **Serial Meetings.** Avoid unintentionally creating a “serial” meeting—a series of communications that result in a majority of the body's members discussing, deliberating, or taking action on a matter of agency business.

**A**



## Conducting the Public's Business in Public

- **Permissible Gatherings.** Not every gathering of members of a public body outside a noticed meeting violates the law. For example, a violation would not occur if a majority of the members attend the same educational conference or attend a meeting not organized by the local agency as long as members do not discuss among themselves agency business except as part of the gathering. Nor is attendance at a social or ceremonial event in itself a violation. The basic rule to keep in mind is a majority of the members cannot gather *and* discuss agency business except at an open and properly noticed meeting.
- **Closed Sessions.** The open meeting laws include provisions for private discussions under very limited circumstances. The reasons for holding the closed session must be noted on the agenda and different disclosure requirements apply to different types of closed sessions.
- **Posting and Following the Agenda.** In general, public officials may only discuss and act on items included on the posted agenda for a meeting. However, they or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items. Officials can also request staff to look into a matter or place a matter on the agenda for a subsequent meeting. Only under unexpected circumstances can matters that are not on the agenda be discussed or acted upon.

### Example

If two members of a five-member public body consult outside of a public meeting (which is not in and of itself a violation) about a matter of agency business and then one of those individuals consults with a third member on the same issue, a majority of the body has consulted on that issue. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member's polling the body's members in a way that reveals the members' positions to one another.

- **Taping or Recording of Meetings Is Allowed.** Anyone attending a meeting may photograph or record it with an audio or video recorder unless the governing body makes a finding that the noise, illumination, or obstruction of view will disrupt the meeting. Any meeting tape or film made by the local agency becomes a public record that must be made available to the public for at least 30 days.
- **Sign-In Must Be Voluntary.** Members of the public cannot be required to register their name or satisfied any other condition for attendance. If an attendance list is used, it must clearly state that signing the list is voluntary.

### Consequences of Non-Compliance with Open Meeting Requirements

- **Nullification of Decision.** Many decisions that are not made according to the open meeting laws are voidable. After asking the agency to cure the violation, either the district attorney or any interested person may sue to have the action declared invalid.
- **Criminal Sanctions.** Additionally, members of the body who intentionally violate the open meeting laws may be guilty of a misdemeanor. The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.
- **Other Measures.** Either the district attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws. Another remedy, under certain circumstances, is for a court to order that all closed sessions be tape-recorded. Regulations of public participation beyond those allowed by applicable statutory and constitutional principles can be a civil rights violation.
- **Attorneys' Fees and Costs.** Attorneys' fees and costs may be awarded to those who successfully challenge open meeting violations.

# B

## The Public's Right to Participate in Meetings

### General Rules

- **Democracy in Action.** The public has a right to address the public body at any meeting. A public official's role is to both hear and evaluate these communications.
- **The Public's Right to be Heard.** Generally, every regular meeting agenda must provide an opportunity for the public to address the public body on any item within the body's jurisdiction. If the issue of concern is one pending before the body, the opportunity must be provided before or during the body's consideration of that issue.

#### Open-Government-Is-Good-Politics Note

The media are highly vigilant in monitoring compliance with open government requirements—and quick to report on perceived violations.

### Key Things to Know

- **Anonymous Speech Must Be Permitted.** Members of the public cannot be required 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.
- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner. For example, some agencies impose a uniform time limit on each person providing public comments on an issue.
- **Dealing with Dissension.** The chair cannot stop speakers from expressing their opinions or their criticism of the body. If an individual or group willfully interrupts a meeting and order cannot be restored, the room may be cleared. Members of the media must be allowed to remain and only matters on the agenda can be discussed.

# C

## The Public's Right To Access Agency Documents and Records

### General Rules

- Public agencies must generally make their records available for inspection by the public. Disclosure is the rule; withholding is the exception. In addition, there are a number of state laws that require affirmative disclosure of certain kinds of information (for example, by posting the information on the agency's website).

### Key Things to Know

- **Agenda and Meeting Materials.** Copies of the agenda materials and other documents not exempt from disclosure distributed to the body must be available to the public. Any nonexempt materials prepared by the local agency must be available for public inspection at the meeting. Materials prepared and distributed by some other person must be made available after the meeting.
- **Scope of Access.** The public has the right to see nonexempt materials that are created as part of the conduct of the people's business. These materials include any writing that was prepared, owned, used, or retained by a public agency. This can include documents, computer data, e-mails, facsimiles, and photographs.
- **Presumption and Exceptions.** Written materials are presumed to be a public record unless an exception applies. There are a number of exceptions. For example, personnel records are typically exempt from disclosure because their release may violate an employee's privacy rights.

The public's right of access to public records is broadly construed and applies to many documents that public officials might otherwise assume are protected from disclosure.

#### Consequences of Violation

Anyone can sue the agency to enforce his or her right to access public records subject to disclosure. If the agency loses or otherwise produces the records as the result of the lawsuit, it must pay costs and attorneys fees.

## Beyond Legal Minimums

It is important to note that the requirements discussed in this pamphlet are legal minimums for local government transparency in decision-making. Local agencies can provide for greater transparency.

In thinking about how an agency might provide for greater transparency, questions local agency officials might ponder include the following:

- 1 How can the agency make public information more readily available and easily understandable by the public in order to promote public trust and confidence in the agency and demonstrate the agency's commitment to transparency?
- 2 Are there kinds of information that are already publicly available in some form, but could be made available more conveniently to the public (for example, through voluntarily posting the information on the agency's website or including links on the agency's website to where information is available on other websites)?
- 3 What kinds of information might be of interest to a cross-section of the public relating to the agency's operations and decision-making processes? Are there ways this information can be made available without individual members of the public having to ask for it?

Ongoing consideration of these kinds of questions enables a local agency's officials to engage in collective discussion and decision-making about ways in which their agency can set its sights higher than the minimum requirements of the law.

### A Note on Civility in Public Discourse

For communities to be able to work through difficult issues, it's important that people be able to express differing opinions about what best serves the public's interests in a respectful and civil manner.

This includes focusing on the *merits* of one's position. Even if people disagree about what's best for the community in this situation, it doesn't mean that those holding different views are bad people. Treat others with the same respect as one would like to be treated. Questioning others' motives or intelligence, being hostile, engaging in name-calling or making threats undermines one's effectiveness.

No matter how passionate one is about an issue, the goal is to conduct oneself in a way that will add to one's credibility and standing as a thoughtful member of the community.

## Resources for Further Information

California's open government laws are complex and extensive. Consult the following resources for more information on these laws.

- Understanding the *Basics of Public Service Ethics: Transparency Laws*, available at [www.ca-ilg.org/transparency](http://www.ca-ilg.org/transparency) (includes discussions of other kinds of disclosure laws, in addition to Open Meeting Law and Public Records Act).
- *Open and Public IV: A User's Guide to the Ralph M. Brown Act, 2d Edition*, 2010. Available on the League of California Cities website at [www.cacities.org](http://www.cacities.org) or by calling 916.658.8200.
- *The People's Business: A Guide to the California Public Records Act*, 2008. Available on the League of California Cities website at [www.cacities.org](http://www.cacities.org) or by calling 916.658.8200.

Local officials should also consult their agency counsel with questions.

The Attorney General also offers guides on these laws; they are available from the Attorney General's website: [http://ag.ca.gov/publications/2003\\_Intro\\_BrownAct.pdf](http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf) (Brown Act Guide) and [http://ag.ca.gov/publications/2003\\_Intro\\_BrownAct.pdf](http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf) (Public Records Act).

### INSTITUTE FOR LOCAL GOVERNMENT

The Institute for Local Government promotes good government at the local level with practical, impartial, and easy-to-use resources for California communities.

ILG is the research and education affiliate of the California State Association of Counties and the League of California Cities.

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