

AGENDA
REGULAR MEETING OF THE CITY OF SUISUN CITY
PLANNING COMMISSION
6:00 P.M., FEBRUARY 9, 2021

COUNCIL CHAMBERS
701 CIVIC CENTER BOULEVARD
SUISUN CITY, CALIFORNIA 94585

*DUE TO CORONAVIRUS COVID-19 RESIDENTS ARE ENCOURAGED
TO ATTEND THE PLANNING COMMISSION MEETING VIA THE APPLICATION, ZOOM.
ZOOM MEETING INFORMATION:*

WEBSITE: <https://zoom.us/join>
MEETING ID: 848 8214 5513
CALL IN PHONE NUMBER: (707) 438-1720

*TO VIEW THE MEETING ON THE SUISUN CITY WEBSITE, LIVESTREAM
(URL: <https://www.suisun.com/government/meeting-video/>)*

*REMOTE PUBLIC COMMENT IS AVAILABLE FOR THE PLANNING COMMISSION MEETING
BY EMAILING JKEARNS@SUISUN.COM (PRIOR TO 5:30PM) OR
VIA WEBSITE OR PHONE APPLICATION, ZOOM*

Next Resolution No. PC21-01

1. CALL TO ORDER.

2. ROLL CALL:

Commissioner Adams
Commissioner Borja
Commissioner Pooni
Commissioner Rowe
Commissioner Tewari
Commissioner Theriault
Commissioner Zeiss

Pledge of Allegiance
Invocation

3. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

4. APPROVAL OF AGENDA:

Approval of Planning Commission agenda of February 9, 2021.

5. APPROVAL OF MINUTES:

Approval of Planning Commission minutes of November 10, 2020.

6. PUBLIC COMMENT:

This is a time for public comments for items that are not listed on this agenda. Comments should be brief. If you have an item that will require extended discussion, please request the item be scheduled on a future agenda.

7. CONFLICT OF INTEREST NOTIFICATION:

(Any items on this agenda that might be a conflict of interest to any Commissioner should be identified at this time.)

8. CONSENT CALENDAR: NONE

9. CONTINUED ITEMS: NONE

10. PUBLIC HEARINGS: NONE

For each of the following items, the public will be given an opportunity to speak. After a Staff Report, the Chair will open the Public Hearing. At that time, the applicant will be allowed to make a presentation. Members of the public will then be allowed to speak. After all have spoken, the applicant is allowed to respond to issues raised by the public, after which the Public Hearing is normally closed. Comments should be brief and to the point. The Chair reserves the right to limit repetitious or non-related comments. The public is reminded that all decisions of the Planning Commission are appealable to the City Council by filing a written Notice of Appeal with the City Clerk within ten (10) calendar days.

11. GENERAL BUSINESS:

- A. Resolution No. PC21-____, A Resolution of the Planning Commission of the City of Suisun City Providing an Administrative Interpretation of the “Contractor’s and Corporation Yards” Use in the Commercial Services and Fabricating (CSF) District.

12. INFORMATIONAL ITEMS:

- A. Brown Act and Conflict of Interest Presentation.

13. REPORTS BY STAFF AND PLANNING COMMISSION:

- A. Staff
- B. Planning Commission

14. AGENDA FORECAST / FUTURE AGENDA ITEMS.

15. ADJOURNMENT.

MINUTES
REGULAR MEETING OF THE CITY OF SUISUN CITY
PLANNING COMMISSION
6:00 P.M., NOVEMBER 10, 2020

COUNCIL CHAMBERS
701 CIVIC CENTER BOULEVARD
SUISUN CITY, CALIFORNIA 94585

*DUE TO CORONAVIRUS COVID-19 RESIDENTS ARE ENCOURAGED
TO ATTEND THE PLANNING COMMISSION MEETING VIA THE APPLICATION, ZOOM.
ZOOM MEETING INFORMATION:*

WEBSITE: <https://zoom.us/join>
MEETING ID: 846 2844 3869
CALL IN PHONE NUMBER: (707) 438-1720

*TO VIEW THE MEETING ON THE SUISUN CITY WEBSITE, LIVESTREAM
(URL: <https://www.suisun.com/government/meeting-video/>)*

*REMOTE PUBLIC COMMENT IS AVAILABLE FOR THE PLANNING COMMISSION MEETING
BY EMAILING JKEARNS@SUISUN.COM (PRIOR TO 5:30PM) OR
VIA WEBSITE OR PHONE APPLICATION, ZOOM*

1. CALL TO ORDER.

Vice-Chair Garry Rowe called the meeting to order at 6:04 PM

2. ROLL CALL:

Commissioners Present:

Vice-Chair - Garry Rowe

Chairperson - Tony Ramos

Commissioner- Kenneth Holzwarth

Commissioner - Robert Thomas

Commissioner- Dennis Clemente

Commissioners Absent:

Commissioner- Amit Pal

Commissioner – Angel Borja

Commissioner- Angel Borja joined meeting at 6:22pm

Pledge of Allegiance – Tony Ramos

Invocation – John Kearns

3. APPROVAL OF AGENDA:

Approval of Planning Commission agenda of November 10, 2020.

Commissioner Rowe motioned for approval of Planning Commission Meeting Agenda of November 10, 2020.

Ayes: Holzwarth, Thomas, Clemente, Rowe, Ramos

Absent: Pal, Borja

4. APPROVAL OF MINUTES:

Approval of Planning Commission minutes of August 25, 2020.

Commissioner Clemente motioned that roll call on minutes be updated to reflect that he was not absent August 25, 2020.

Motion passed by the following vote:

Ayes: Holzwarth, Thomas, Clemente, Rowe, Ramos

Absent: Pal, Borja

August 25, 2020 Minutes reflect that Commissioner Clemente joined that meeting at 6:17 due to technical difficulties.

5. PUBLIC COMMENT: NONE

This is a time for public comments for items that are not listed on this agenda. Comments should be brief. If you have an item that will require extended discussion, please request the item be scheduled on a future agenda.

6. CONFLICT OF INTEREST NOTIFICATION: NONE

(Any items on this agenda that might be a conflict of interest to any Commissioner should be identified at this time.)

7. CONSENT CALENDAR: NONE**8. CONTINUED ITEMS: NONE****9. PUBLIC HEARINGS:**

For each of the following items, the public will be given an opportunity to speak. After a Staff Report, the Chair will open the Public Hearing. At that time, the applicant will be allowed to make a presentation. Members of the public will then be allowed to speak. After all have spoken, the applicant is allowed to respond to issues raised by the public, after which the Public Hearing is normally closed. Comments should be brief and to the point. The Chair reserves the right to limit repetitious or non-related comments. The public is reminded that all decisions of the Planning Commission are appealable to the City Council by filing a written Notice of Appeal with the City Clerk within ten (10) calendar days.

- A. Request to Establish a Type 10 Retail Cannabis Dispensary and Type 11 Distribution Facility at 521 Railroad Avenue (APN: 0037-080-060).

Resolution No. PC20-____, A Resolution of the Planning Commission of the City of Suisun City Recommending City Council Approval of a Development Agreement, Commercial Cannabis Business Permit, Cannabis Business Zone, and Site Plan/Architectural Review for a Type 10 Retail Cannabis Dispensary and Type 11 Distribution at 521 Railroad Avenue (APN: 0037-080-060).

Commissioner Angel Borja joined meeting at 6:22pm

Shryne Group – 521 Railroad Ave Application Proposal presented by Senior Planner Kearns.

City Attorney Elena Gerli recommended that late payment penalty section of the agreement be updated to reference code section 3.44.050. Also recommended combining sections 6.2.2.1 and .6.2.2.2 change will be made to pay quarterly taxes per the code; and not monthly as the agreement references.

Public hearing was opened. No public comment was provided. The public hearing was closed

Commissioner Clemente motioned to approve the resolution with the two amendments requested by the City Attorney.

Commissioner Thomas seconded the motion.

The motion passed 6-0.

Ayes: Holzwarth, Thomas, Clemente, Rowe, Ramos, Borja

Absent: Pal

10.GENERAL BUSINESS: NONE

11. INFORMATIONAL ITEMS: NONE

12. REPORTS BY STAFF AND PLANNING COMMISSION:

A. Staff –

City Manager Folsom provided an update on:

- a. November 3, 2020 election results:
- b. Agreements to redevelop Almond Gardens have been made.
- c. Waiting on appraisal on West Wind property to sell to Camron for higher end apartment complex.
- d. Approved Quailed Successor Developer (Discovery Homes) for the Crystal Middle School project.
- e. Still in discussion with affordable housing developer at the corner of Buena Vista and Marina.
- f. Extension on 8-acre parcel to retail developer.
- g. October 6th budget update to council.
- h. Holiday Inn Update – Delayed waiting on PG&E to get elevator installed – approximate opening at end of January.

B. Planning Commission

- a. Commissioner Holzwarth – Asked if the City was still in a Disposition and Development Agreement (DDA) with Main Street West. City Manager Folsom indicated the settlement agreement was going to Solano County Oversight Board for action.

13. AGENDA FORECAST / FUTURE AGENDA ITEMS.

Senior Planner Kearns reported that next meeting would be December 8,2020.

14. ADJORNMENT.

Meeting was adjourned at 7:21 pm

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Planning Commission Agenda Report

Meeting Date 02/09/2021

DATE: 02/09/2021

TO: PLANNING COMMISSION

FROM: John Kearns, Senior Planner (707.421.7337, jkearns@suisun.com)

RE: Administrative Interpretation of Construction and Corporation Yards.

Files:

- A. Resolution No. PC21-____, A Resolution of the Planning Commission of the City of Suisun City Providing an Administrative Interpretation of the “Contractor’s and Corporation Yards” Use in the Commercial Services and Fabricating (CSF) District.

SUMMARY

Title 18 “Zoning” of the Suisun City Code lacks certain definitions that allow staff to properly classify uses. A recent example of this is the proper classification of “Contractor’s and Corporation Yards” in the Commercial Services and Fabricating (CSF) Zoning District. In order to classify such a use, staff is bringing forward a definition in hopes that the Planning Commission can adopt an administrative interpretation.

Recommendation: Planning staff recommends adoption of Resolution No. PC21-____; A Resolution of the Planning Commission of the City of Suisun City Providing an Administrative Interpretation of the “Contractor’s and Corporation Yards” Use in the Commercial Services and Fabricating (CSF) District.

Proposed Motion: I move that the Planning Commission adopt Resolution No. PC21-____, A Resolution of the Planning Commission of the City of Suisun City Providing an Administrative Interpretation of the “Contractor’s and Corporation Yards” Use in the Commercial Services and Fabricating (CSF) District.

BACKGROUND/DISCUSSION

Recently, the City has become aware of heavy equipment storage businesses that have been established without first obtaining a business license. In one case, the heavy equipment appears to be coming and going from the site daily and dispensing gasoline illegally by not following proper protocols. Staff viewed this as a heavy equipment storage and rental business, however, the closest thing listed in the code is “contractor’s and corporation yard”. With this, staff brought forward an Interim Urgency Ordinance regarding heavy equipment storage businesses to the February 2, 2021 City Council meeting. The definition provided for a heavy equipment storage business was intentionally broad which would allow staff to research the type of business and come back with a permanent ordinance later. However, the ordinance did not receive the required 4/5 votes of the City Council and thus was not adopted.

ANALYSIS

Although contractor's and corporation yard is listed as an allowable use in Section 18.20.070 of the code, it is not defined. In an attempt to clearly define a contractor's and corporation yard and be able to differentiate it from a heavy equipment storage business, which may be subject to different regulations based on secondary impacts that may be different from those of contractor's and corporation yards, staff is bringing forward a definition for the Planning Commission to consider. The definition for consideration is the following:

“Contractor’s and Corporation Yard means contractor and subcontractor administrative offices, workshops, and the indoor or outdoor storage of tools, equipment, materials, and vehicles, associated with a specific construction project. A Contractor’s and Corporation Yard shall not include the storage, use, or management or dispensation of fuel and/or other hazardous substances that are regulated by state and federal laws. A Contractor’s and Corporation Yard is a temporary use that terminates upon the completion of the project with which it is associated, and is typically located on/or within a short distance from the construction site.”

If adopted, the definition will be incorporated into an overall update to Title 18 (Zoning) which is expected to come to the Planning Commission later this year.

CEQA Review

Staff determined that the adoption of an administrative interpretation which clarifies the meaning of an existing use is exempt from the California Environmental Quality Act (“CEQA”) as the activity is not a project, and in any event has no possibility to have a significant effect on the environment. Pub. Res. § 21065; 14 CCR §§ 15060(c)(2), (3), 15378(a); 14 CCR § 15061(a), (b)(3).

NEXT STEPS

If adopted, the definition would be applied immediately by staff. As stated above, the interpretation would be made a part of a larger update of the zoning code which is expected to come before the Planning Commission later this calendar year.

PUBLIC CONTACT

The agenda was posted on the Suisun City website, as well as at City Hall, Harbormasters Building, Suisun City Fire Station, and Joe Nelson Community Center. As of the date of this report, no additional inquiries regarding this item had been received by City staff.

DISTRIBUTION

Internal

- PC Distribution
- City Manager Greg Folsom
- Senior Planner John Kearns

External

- City Website <https://www.suisun.com/planning-commission/>

ATTACHMENTS

1. PC 21-__: Resolution No. PC21-__, A Resolution of the Planning Commission of the City of Suisun City Providing an Administrative Interpretation of the “Contractor’s and Corporation Yards” Use in the Commercial Services and Fabricating (CSF) District.
2. PowerPoint Presentation.

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RESOLUTION NO. PC 21-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SUISUN CITY PROVIDING AN ADMINISTRATIVE INTERPRETATION OF THE “CONTRACTOR’S AND CORPORATION YARDS” USE IN THE COMMERCIAL SERVICES AND FABRICATING (CSF) DISTRICT

WHEREAS, the City of Suisun City has broad authority to legislate for the public health, safety, and welfare pursuant to Art. XI, Sec. 7 of the California Constitution.

WHEREAS, the City Council of the City of Suisun City has, by ordinance, conferred upon the Suisun City Planning Commission all the powers provided for in Titles 17 (Subdivisions) and 18 (Zoning) of the Suisun City Municipal Code, and by Article 7 of Chapter 3 of Division 1 of the Government Code.

WHEREAS, Section 65800 provides that the “It is the purpose of [Chapter 3 of Division 1 of the Government Code] to provide for the adoption and administration of zoning laws, ordinances, rules and regulations by counties and cities, as well as to implement such general plan as may be in effect in any such county or city. Except as provided in Article 4 [Open Space Zoning] and in Section 65913.1 [Zoning sufficient vacant land for residential use with appropriate standards, under Housing Development Approvals], the Legislature declares that in enacting this chapter it is its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.”

WHEREAS, interpretation by the Planning Commission of the City’s zoning provisions in Title 18 of the Municipal Code is within the scope of its authority to “adopt[] and [administer] zoning laws, ordinances, rules and regulations.”

WHEREAS, the Planning Commission finds that it is necessary for the orderly and consistent application of the City’s zoning ordinances that uses be clearly defined so as to provide guidance to businesses and the general public regarding what is and what is not permitted, and to avoid unintended secondary impacts by loosely defined uses.

WHEREAS, the Planning Commission finds that one such use is “Contractor’s and Corporation Yard,” which is currently not defined in the zoning code, and which can potentially have significant secondary impacts if not clearly defined, including but not limited to, improper use of fuel or other hazardous substances.

WHEREAS, the Planning Commission finds that clarifying the definition of “Contractor’s and Corporation Yard” will help to mitigate potential secondary impacts and provide the necessary guidance to applicants and the public alike.

WHEREAS, this resolution is exempt from the requirements of the California Environmental Quality Act pursuant to Section 21065 of the Public Resources Code, as this activity does not constitute a project because it does not have the potential to directly or indirectly cause a physical change to the

environment. 14 CCR §§ 15060(c)(2), (3), 15378(a). Additionally, an interpretation of existing code cannot possibly have a significant effect on the environment, and thus is covered by the “common sense exemption.” 14 CCR §15061(a), (b)(3).

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Suisun City does hereby determine as follows:

SECTION 1. The above recitals are true and correct and incorporated herein by reference.

SECTION 2. The meaning of the term “Contractor’s and Corporation Yard” is hereby clarified to mean contractor and subcontractor administrative offices, workshops, and the indoor or outdoor storage of tools, equipment, materials, and vehicles, associated with a specific construction project. A Contractor’s and Corporation Yard shall not include the storage, use, or management or dispensation of fuel and/or other hazardous substances that are regulated by state and federal laws. A Contractor’s and Corporation Yard is a temporary use that terminates upon the completion of the project with which it is associated, and is typically located on/or within a short distance from the construction site.

SECTION 3. Any interested person may appeal this decision to the City Council, in whole or in part. The appeal shall set forth in writing, the grounds for appeal and any specific action being requested by the appellant. Any appeal letter must be filed within 15 calendar days of the date of this decision, and must be accompanied by the applicable appeal fee. This decision shall become final if no appeal is timely filed.

The forgoing motion was made by Commissioner _____ and seconded by Commissioner _____ and carried by the following vote:

AYES:	Commissioners:
NOES:	Commissioners:
ABSENT:	Commissioners:
ABSTAIN:	Commissioners:

WITNESS my hand and the seal of said City this 9th day of February 2021.

Commission Secretary



Administrative Interpretation: Contractor's and Corporation Yard

DATE: FEBRUARY 9, 2021



Background

- Staff has become aware of heavy equipment uses that have illegally established within the city.
- Title 18 “Zoning” of the Suisun City Code lacks certain definitions including “Contractor’s and Corporation Yard”.
- City Council chose not adopt Interim Urgency Ordinance which included a broad definition for “Heavy Equipment Storage and Rental Facility” at their February 2 meeting.



Administrative Interpretation and Next Steps



- **“Contractor’s and Corporation Yard** means contractor and subcontractor administrative offices, workshops, and the indoor or outdoor storage of tools, equipment, materials, and vehicles, associated with a specific construction project. A Contractor’s and Corporation Yard shall not include the storage, use, or management or dispensation of fuel and/or other hazardous substances that are regulated by state and federal laws. A Contractor’s and Corporation Yard is a temporary use that terminates upon the completion of the project with which it is associated, and is typically located on/or within a short distance from the construction site.”
- If adopted, staff will incorporate the definition into the upcoming update to the Zoning Code which will come to the Planning Commission later this year.



Recommendation

It is recommended that the Planning Commission adopt Resolution PC21-___; A Resolution of the Planning Commission of the City of Suisun City Providing an Administrative Interpretation of the “Contractor’s and Corporation Yards” Use in the Commercial Services and Fabricating (CSF) District.



Planning Commission Agenda Report

Meeting Date 02/09/2021

DATE: 02/09/2021
 TO: PLANNING COMMISSION
 FROM: John Kearns, Senior Planner (707.421.7337, jkearns@suisun.com)
 RE: Brown Act and Conflict of Interest Presentation

Files:

SUMMARY

Attached is a presentation on the Brown Act and Conflict of Interest Code from the City Attorney Aleshire and Wynder. The presentation will be given by Nick Papajohn. It is expected that the Planning Commission will have questions regarding the material so plenty of time will be provided for discussion. This will be the first of several trainings provided to the Commission in the upcoming months. At future meetings, topics such as the role of a Planning Commissioner and the California Environmental Quality Act will be discussed with the Commission.

PUBLIC CONTACT

The agenda was posted on the Suisun City website, as well as at City Hall, Harbormasters Building, Suisun City Fire Station, and Joe Nelson Community Center. As of the date of this report, no additional inquiries regarding this item had been received by City staff.

DISTRIBUTION

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ATTACHMENTS

1. PowerPoint Presentation.

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CITY OF SUISUN CITY



Planning Commission Orientation: Brown Act, Conflicts

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Reference Materials

- ❖ City of Suisun Council Norms and Procedures
- ❖ League Brown Act Guide
- ❖ AB 1234 Ethics Handout
- ❖ City Attorney's Legal Issues Reference Guide

2

2

Meeting
format

- Meeting called to order
- Roll call
- Pledge of Allegiance/Invocation
- Public comment
- Conflict of Interest Notification
- Reports
- Presentations
- Consent calendar
- Public hearings
- General business
- Mayor/council/CM comments
- Public comment
- Adjournment


3

3

RALPH M. BROWN ACT

Most important take-aways

- ❖ Must deliberate and take action in open session
- ❖ Public comment is a crucial part of the process
- ❖ Notice: the public needs to know when you're discussing what
- ❖ If it's not on the agenda, don't touch it
 - ❖ Ok to bring up an item and get consensus to have it placed on future agenda



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THE BROWN ACT **FUNDAMENTAL PROVISION**

“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.”

(Gov. Code § 54953)



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CONDUCTING BUSINESS AT OPEN MEETINGS

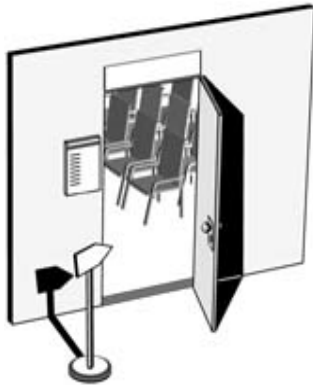
- ❖ A majority may not consult outside a properly noticed meeting that is open to public
- ❖ Key concept: what constitutes a meeting
 - ❖ Example: Serial communications
- ❖ Exceptions for certain kinds of events
 - ❖ As long as a majority does not consult among themselves



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WHAT IS A MEETING? (1)



Definition:

"Meeting" includes any gathering of a *majority* of the members of a legislative body to *hear, discuss, or deliberate* upon any item which is within *its subject matter jurisdiction*.



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WHAT IS A MEETING? (2)

Means of Communication: A meeting includes *any use of direct communication, personal intermediaries, or technological devices* which are employed by a *majority* of the members of the legislative body to *develop a collective concurrence on action to be taken* by members of the legislative body.

(Gov. Code § 54952.2)



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WHAT IS A MEETING? (3)



- ❖ Meetings take place if quorum receives information on, discusses, or deliberates on any item on which the body may legally act
- ❖ Must be within the boundaries of the agency
- ❖ Applies to “legislative” bodies and advisory
- ❖ Special Meetings called by Mayor or majority – 24hr notice
- ❖ Serial and rotating meetings or polling prohibited, but social gatherings are permitted



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WHAT IS NOT A MEETING?

If a quorum does not receive information on, discuss, or deliberate on any item, on which the body may legally act, then the following generally are NOT meetings:

- ❖ Individual contact (including messenger apps)
- ❖ Public conferences
- ❖ Other local agency meetings
- ❖ Community meetings
- ❖ Social gatherings



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SOCIAL MEDIA RESTRICTIONS (AB 992)



- ❖ A councilmember may not respond directly to any communication posted or shared by another councilmember regarding agency business on social media.
- ❖ This includes likes, thumbs up, emojis, sharing, or commenting
- ❖ Social media is any online platform that “is open and accessible to the public.” Includes traditional social media sites such as Facebook, Twitter, or Nextdoor, but also smaller forums such as a discussion section on a news website.



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BEST PRACTICES

- ❖ Don't discuss agency business with fellow decision-makers outside meetings
- ❖ Don't discuss items not before you
- ❖ Exceptions...



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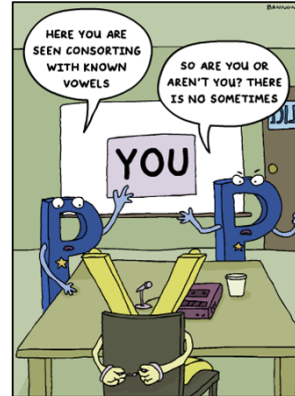
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...EXCEPTIONS

No discussion of any item not on agenda

... Except:

- ❖ Brief responses.
- ❖ Statements or questions.
- ❖ Questions for clarification.
- ❖ Reference to staff or other resources for factual information.
- ❖ Request staff to report at a subsequent meeting.



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AGENDA REQUIREMENTS (1)

- ❖ A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body.
- ❖ Action or discussion on any item not appearing on the posted agenda is generally prohibited

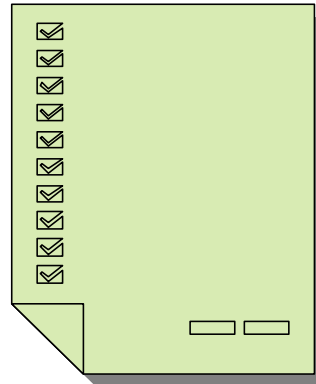


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AGENDA REQUIREMENTS (2)

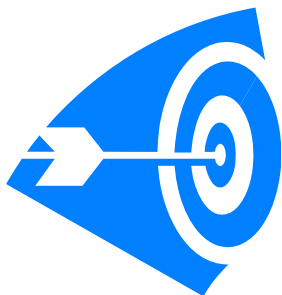
- ❖ Posted within 72 hours
- ❖ Brief description sufficient to inform public of the nature of each item



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STAY ON POINT!



- ❖ All matters to be transacted or discussed on agenda
- ❖ Must include reasonable period of time for public comment before or during consideration
- ❖ To add a new matter body must find:
(1) City became aware of the need for action after agenda was posted,
(2) immediate action is necessary, (3) there must be a 2/3 vote of membership—unanimous vote if less than 2/3 present.



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PUBLIC PARTICIPATION IN MEETINGS

- ❖ Anyone can attend open meetings
- ❖ Cannot require names, questionnaires, or conditions to attendance
 - ❖ Exception: can require masks during pandemic – health and safety!
- ❖ Public may record proceedings by video, film, or audiotape





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MEETING DISRUPTIONS

- ❖ Speakers must be recognized by presiding officer.
- ❖ When someone speaks out of turn or disrupts the meeting, can be ordered to stand down, and warned that if they don't comply, they will be removed.
- ❖ If individual does not stand down, or warning impracticable, can be removed temporarily or for the rest of the meeting
- ❖ If order cannot be restored by removing only the disrupting individuals, body may order room cleared; meeting can continue when order restored, or adjourned to a date and time certain



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CLOSED SESSIONS

FOUR GROUNDS FOR CLOSED SESSION:

- ❖ Pending/Anticipated Litigation
- ❖ Real Property Negotiations
- ❖ Labor Negotiations
- ❖ Personnel Matters
- ✓ Must give employee 24 hr written notice of right to have charges heard in open session



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CLOSED SESSIONS

- ❖ Confidentiality applies!
- ❖ Cannot discuss funds, funding priorities, or budget, salaries, contract negotiations (unless labor negotiations). . .
- ❖ Must reconvene in open session and make any required disclosure



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THE BROWN ACT

PENALTIES: FAILING TO COMPLY

- ❖ Nullification of decision
- ❖ Criminal Misdemeanor – for intentional violations (up to 6 months in jail/\$1000 fine)
- ❖ Injunction, Mandamus & Declaratory Relief
- ❖ Challenger **must** demand corrective action within 90 days of action -- or 30 days if agenda issue
- ❖ 30 days to correct action before suit
- ❖ Intense adverse media attention



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AB 1234 Ethical Values & The Laws That Promote Them

- ✓ **Trustworthiness**
 - Bribery, Conflicts of Interest, Contractual Conflicts, Campaign Contributions
- ✓ **Respect**
 - Political Reform Act disclosures, Brown Act, Public Records Act
- ✓ **Responsibility**
 - Gift restrictions, misuse of public funds, gifts of public funds, mass mailing restrictions
- ✓ **Fairness**
 - Protections against bias, due process, incompatible offices, competitive bidding, anti-nepotism



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Four Groups of Ethics Laws

1. Personal financial gain
2. Personal advantages and perks
3. Governmental transparency
4. Fair processes



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Group 1: Personal Financial Gain Issues

- **Principle:** Public servants should not benefit financially from their positions



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Examples of Laws

- Bribery and related crimes
- Financial interest disqualification requirements
- Revolving door restrictions



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Disqualification Based on Financial Interests

- Rule: You may not participate in a decision if financial interests are affected by a decision (Gov. Code § 87100, *et seq.*)
- A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family. (FPPC Regulation 18700)
- Effect can be positive or negative



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Disqualification versus Abstention

- Mere existence of a conflict does not imply wrongdoing *unless you don't disqualify yourself when you should*
- Abstention vs. Disqualification
 - Abstention = voluntary
 - Disqualification = legally required



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What Kinds of Interests?

INCOME



“\$500 Rule” - Sources of direct income of \$500 or more in prior 12 months

- Your own income
- Promised income
- Partner's/child's income
- Loans/guarantors



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What Kinds of Interests? VALUE OF BUSINESS OR REAL PROPERTY

"\$2000 Rule" - Investment in business entity
or interest in real property



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What Kinds of Interests? REAL PROPERTY (1)

Interest is material when it involves
"property located 500 feet or less from the
property line of the parcel unless there is
clear and convincing evidence that the
decision will not have any measurable
impact on the official's property"



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What Kinds of Interests? REAL PROPERTY (2)

Interest is presumed not material when it involves property located 1000 feet or more from the property line of the parcel. The “presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official’s property.”



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What Kinds of Interests? REAL PROPERTY (3)

For property located between 500 and 1000, whether the decision would affect the property’s:

Development potential; Income producing potential; Highest and best use; Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or Market value.



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What Kinds of Interests?

GIFTS: \$500 Rule



- Local elected officers may not accept gifts from any single source totaling more than \$500 in a calendar year (regularly updated)

- Complicated rules



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"Public Generally" Exception

A reasonably foreseeable material effect on a financial interest **does not** create a conflict under the Act if the effect on the official's interest is indistinguishable from its effect on the public generally.

The effect is indistinguishable from the effect on the public generally if the official establishes:

1. significant segment of the public (at least 15%) is affected; and
2. the effect on his or her financial interest is not unique.



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Other Ethics Resources:



FPPC – free advice line
(866) ASK-FPPC

legaladvice@fppc.ca.gov

Institute for Local Government

City Attorney

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If You Are Disqualified

- Don't discuss or influence (staff or colleagues)
- Identify nature of conflict at meeting
- Leave room (unless on consent)
- No voting *or discussing* the matter
- NOTE: You do not count towards a quorum!!

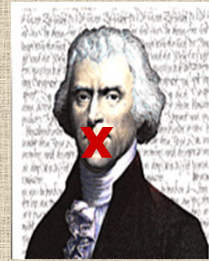


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“Leave the Room” Rule

- Reflects broader FPPC restriction prohibiting voting *or discussing* the matter
- Limited exceptions
 - Owned property
 - Owned/controlled business



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“Few men have the virtue to withstand the highest bidder.”
- *George Washington*

PENALTIES

- Invalidate decision
- Loss of office (+ disqualification for future)
- Misdemeanor (jail time and penalties)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys fees
- Embarrassment (personal and political)



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Warning!

Special Rules for Contracts

(Government Code § 1090)



- Disqualification may not be enough
 - Direct or indirect interest
 - Limited exceptions
- May have to refund money paid
- Felony: \$1,000 fine, imprisonment & loss of office




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Group 2: Perks

Key Principle:

Public servants should not receive special benefits by virtue of their positions



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Two Kinds of Perk Rules

1. Perks that others offer you
2. Perks that you give yourself/use-of-public-resources issues



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Penalties

- Up to \$5,000 per violation
- Own attorneys fees (\$3,000-\$30,000+)
- Others' attorneys fees (for private actions to enforce law)



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Use of Public Resources Issues

- Personal use of public resources (including staff time and agency equipment) prohibited
 - Limited exception for “incidental and minimal use”
- Political use of public resources also prohibited



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Example: Expense Reimbursement

- Familiarize yourself with your agency’s policies/limits
 - What kinds of expenses
 - What rates for food, lodging and transportation
 - The importance of documentation
- Note: Spouse/partner expenses NOT reimbursable



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Political Use of Public Resources

- By individuals or agency itself (support of ballot measures)
- Mass mailing restrictions
 - Goal: restrict incumbents' advantages
- Gifts of public funds



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Consequences of Violations

- Civil penalties: \$1,000/day fine + 3X value of resource used
- Criminal penalties: 2-4 year prison term + disqualification from office
- Can also have income tax implications



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When to ask for help?

- Whenever you have doubts!
- Do NOT wait for the meeting



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Group 3: Transparency Laws

Key Principles:

- It's the public's business.
- The public trusts a process it can see.



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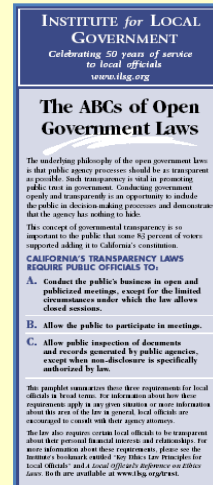
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Transparency Rules

PUBLIC RECORDS ACT – Allows public inspection of records

BROWN ACT – Open meeting laws

- Conduct business in open and publicized meetings.
- Allow public to participate in meetings.



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Public Records

- Agendas and meeting materials
- Other writings prepared, owned, used or retained by agency (including electronic)
- Penalties: Adverse media attention + costs and fees if litigated



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Public Records

- Generally, when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the CPRA. *City of San Jose v. Superior Court* (2017)
- To qualify as a public record, a writing must contain in some substantive way information relating to the conduct of the public's business because it is necessary or convenient to the discharge of an official's duty.

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Financial Interest Disclosure

Transparency includes obligation for high level public servants to disclose financial interests

- Assuming office
- Annually while in office
- Upon leaving office
- SOS parallel campaign finance requirements



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Charitable Fundraising

- Rule applies to elected officials
- Disclose \$5,000 or more from single source
- Charitable, legislative or governmental purpose

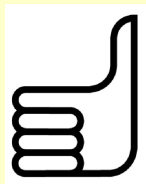


“A politician would do well to remember that he has to live with his conscience longer than he does with his constituent.”

— Melvin R. Laird, 20th Century American Secretary of Defense

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Best Practices

- Assume all information is public or will become public
- Don't discuss agency business with fellow decision-makers outside meetings



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Group 4: Fair Process Laws

- **Principle:** As a decision-maker, the public expects you to be impartial and avoid favoritism



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Fair Process Laws: Due Process

- Due process requirements and rules against bias
- Which hat? Legislative vs. Quasi-Judicial



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Fair Process Laws: Due Process

Kinds of impermissible bias:

- Personal Interest in the Decision's Outcome
- Personal Bias
- Factual Bias




Note rules re: *ex parte* contacts

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Fair Process Laws: Public Hearing

- **Staff report** and Questions of Staff.
 - **Open Public Hearing**
 - Applicant (or those in favor) and Questions of the Applicant
 - Opposition (or those against)
 - Applicant's Rebuttal
 - **Close Public Hearing**
 - **Discussion and Decision**
- 
- A silhouette of a person in a suit standing at a podium with microphones, gesturing with their right hand. To the right of the speaker is a large red prohibition sign (a circle with a diagonal line) over the word "Favoritism" in a bold, black, sans-serif font. The background of the slide is a light blue grid pattern.



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Fair Process Laws: Incompatible Office Prohibitions

Offices incompatible if:

- Clash of duties/loyalties
- Dual office improper for public policy reasons
- One office supervises the other



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Fair Process Laws: Competitive Bidding Requirements

- Competitive bidding requirements

- State law defines
- Also local requirements
- Principles:
 - Everyone has a right to compete for agency's business
 - That competition produces the best price for taxpayers



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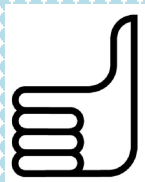
Fair Process Laws, continued

- Disqualification requirements if decision involves family members
- Campaign contribution restrictions (appointed bodies, not elected)
- Soliciting campaign contributions from employees



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Best Practices

- Think fairness and merit-based decision-making in your decisions
- Keep politics separate from relationships with agency staff
- Avoid committing/commenting before the public hearing

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Key Lessons

- The law sets minimum standards for ethical behavior
 - Violations of ethics laws carry stiff penalties
 - When in doubt, ask and ask early
- It's your choice how high you want to set your sights above the minimum requirements of the law

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QUESTIONS

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