

RESOLUTION NO. 4330


A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF HUNTINGTON BEACH ADOPTING A COUNCIL MANUAL

BE IT RESOLVED by the City Council of the City of
Huntington Beach that it does hereby adopt a Council Manual,
which manual is attached hereto and by this reference made a
part hereof.

Future amendments to the Council Manual shall be by
resolution of the City Council which shall relate only to the
sections amended.

Resolutions No. 1463, 2539, 3164, 3306, 3664 and 4227
are hereby repealed.


PASSED AND ADOPTED by the City Council of the City of
Huntington Beach at a regular meeting thereof held on the 20th
day of September, 1976.


Mayor

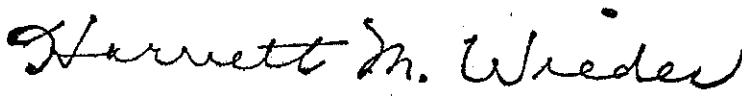
ATTEST:

APPROVED AS TO FORM:


City Clerk


City Attorney

APPROVED AS TO CONTENT AND
AS INITIATING DEPARTMENT:


Mayor

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)

I, ALICIA M. WENTWORTH, the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of more than a majority of all the members of said City Council at a regular _____ meeting thereof held on the 20th day of September, 19 76, by the following vote:

AYES: Councilmen:
 Bartlett, Pattinson, Coen, Gibbs, Siebert, Shenkman, Wieder

NOES: Councilmen:
 None

ABSENT: Councilmen:
 None

Alicia M. Wentworth

City Clerk and ex-officio Clerk
of the City Council of the City
of Huntington Beach, California

COUNCIL MANUAL
TABLE OF CONTENTS

Chapter 1.01, CITY COUNCIL

Sections:

- 1.01.01 Rules of Office of councilpersons
- 1.01.02 Vacancies
- 1.01.03 Attendance
- 1.01.04 Duties of the City Council
- 1.01.05 Duties of the Mayor
- 1.01.06 Duties of the Mayor Pro Tempore
- 1.01.07 Compensation of councilpersons

Chapter 1.02, CODE OF ETHICS

Sections:

- 1.02.01 Purpose of code
- 1.02.02 Definition
- 1.02.03 Responsibilities of public office
- 1.02.04 Dedicated service
- 1.02.05 Fair and equal treatment--Unilateral communications
- 1.02.06 Standards of conduct

Chapter 1.03, COUNCIL MEETING

Sections:

- 1.03.01 Agenda
- 1.03.02 Time and place of council meeting

Chapter 1.04, PARLIAMENTARY PROCEDURE

Sections:

- 1.04.01 Roberts Rules of Order Revised
- 1.04.02 Parliamentary
- 1.04.03 Motions
- 1.04.04 Vote required--Nonemergency
- 1.04.05 Emergency ordinances
- 1.04.06 Adoption of ordinances

RESOLUTION NO. 4325

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF HUNTINGTON BEACH ADOPTING A COUNCIL MANUAL

BE IT RESOLVED by the City Council of the City of
Huntington Beach that it does hereby adopt a Council Manual,
which manual is attached hereto and by this reference made a
part hereof.

Future amendments to the Council Manual shall be by
resolution of the City Council which shall relate only to the
sections amended.

Resolutions No. 1463, 2539, 3164, 3306, 3664 and 4227
are hereby repealed.

PASSED AND ADOPTED by the City Council of the City of
Huntington Beach at a regular meeting thereof held on the 7th
day of September, 1976.

Mayor

ATTEST:

APPROVED AS TO FORM:

Alicia M. Wentworth

City Clerk

[Signature]

City Attorney

APPROVED AS TO CONTENT AND
AS INITIATING DEPARTMENT:

Harrett M. Wiedes

Mayor

Chapter 1.04, PARLIAMENTARY PROCEDURE contd.

Sections:

- 1.04.07 Reading of ordinances and resolutions
- 1.04.08 Alteration of ordinance after introduction
- 1.04.09 Repeal of resolutions and ordinances
- 1.04.10 Orders for payment of money
- 1.04.11 The vote
- 1.04.12 Division of question ("split vote")
- 1.04.13 Tie votes
- 1.04.14 Nomination and election
- 1.04.15 Rights of Mayor
- 1.04.16 Quorum
- 1.04.17 Ralph M. Brown Act
- 1.04.18 Fines, penalties and franchises
- 1.04.19 Other actions
- 1.04.20 When minute action is a resolution
- 1.04.21 Minute actions
- 1.04.22 Motion to rescind
- 1.04.23 Motion to reconsider
- 1.04.24 Vote required on appellate matters
- 1.04.25 Appointments to boards and commissions

Chapter 1.05, ROLE OF THE CITY ADMINISTRATOR

Sections:

- 1.05.01 Appointment and removal
- 1.05.02 Compensation and residence
- 1.05.03 Duties
- 1.05.04 Meetings
- 1.05.05 Noninterference with administrative service
- 1.05.06 Acting city administrator

Chapter 1.06, ROLE OF THE CITY ATTORNEY

Sections:

- 1.06.01 Term
- 1.06.02 Powers and duties
- 1.06.03 Requests for ordinances and resolutions

Chapter 1.07, ROLE OF THE CITY TREASURER

Sections:

- 1.07.01 Term
- 1.07.02 Powers and duties

TABLE OF CONTENTS TO
APPENDIX TO COUNCIL MANUAL

<u>TITLE</u>	<u>PAGE NO.</u>
Resolution No. 4311, Budget Control	1
Motion to Reconsider	5
Removal of Members of Boards and Commissions	7
Expiration of Terms of Members of the Recreation and Parks Commission	9
City Attorney Opinion No. 73-42	10
Parliamentary Procedure--Script for Mayor	12
Ralph M. Brown Act	15
City Reimbursement for Expenses of Councilperson's Spouse, Memo	39
NIMLO Letter Re City Reimbursement for Expenses of Councilperson's Spouse	40
City Council/Department Head Retreat--Brown Act, City Attorney Opinion No. 76-40	42
Procedure for Handling Executive Sessions of City Council, Letter	48
Resolution No. 4283, Conflict of Interest Code	50

Chapter 1.01

CITY COUNCIL

1.01.01 Rules of Office of Councilpersons. The Huntington Beach City Council is comprised of seven (7) members elected from the city at large to fill a term of four (4) years. Election of City Council members is divided into two (2) cycles. Four (4) Council members are elected at one general municipal election, followed in two (2) years by another general municipal election where three (3) members are elected, and so forth. The term of a City Council member begins on the first Monday after election and any tie in voting should be decided by casting lots. (Charter §500)

1.01.02 Vacancies. A vacancy in the City Council for whatever reason shall be filled by appointment of the City Council; thereafter, at the next municipal election at which it is possible to place the matter on the ballot, the position will be filled for the unexpired term, if any. (Charter §503)

1.01.03 Attendance. If a City Council member absents himself from all regular meetings of the City Council for thirty (30) consecutive days after the last regular meeting the member attended, without the permission of the City Council, or is convicted of a crime involving moral turpitude, or ceases to be an elector of the city, the City Council shall declare his office vacant. In the event the City Council fails to fill the seat by appointment within sixty (60) days, the City Council shall cause an election to be held to fulfill the unexpired term. (Charter §503)

1.01.04 Duties of the City Council. All powers of the city shall be vested in the City Council except as otherwise provided in the city Charter. (Charter §505)

The duties of the City Council include, but are not limited to:

(a) Holding regular meetings at least twice per month at such time as shall be fixed by ordinance (Charter §506) which is 7 p.m. on the first and third Mondays of each month in the Council chambers except where a meeting falls on a holiday then it is to be held on the following day. (Resolution No. 4161)

(b) Calling special meetings by a majority of the City Council. (Charter §507)

(c) Administering oaths and affirmations in any investigation or proceeding pending before the Council, to compel attendance of witnesses, to examine them under oath and to compel the production of evidence. (Charter §509)

(d) Adopt ordinances and resolutions. (Charter §511)

(e) Approving city contracts or authorizing the City Administrator so to bind the city. (Charter §518)

(f) By ordinance or resolution providing for the sale or exchange of personal property not needed in city service, or not fit for its intended purpose. (Charter §518)

(g) Appointing the City Administrator and setting his compensation. (Charter §603)

(h) Removing the City Administrator by majority vote except during or within ninety (90) days of a municipal election. (Charter §606)

(i) Refraining from interference with the administrative service; except for the purpose of inquiry, the City Council must deal with the administrative service through the City Administrator. (Charter §607)

(j) Providing by ordinance or resolution for the organization, conduct and operation of the various offices and departments of the city. (Charter §702)

(k) Controlling all legal business of the city. (Charter §703)

(l) Designating depositories for city funds. (Charter §705)

(m) Fixing by ordinance or resolution amounts and terms of official bonds of all officials or employees. (Charter §712)

(n) Refraining from accepting other elective office while an elective officer of the city and, if done, the Council member will be deemed to have vacated his office. (Charter §710)

(o) Refraining from having any financial interest in any transaction of the city. (Charter §709)

(p) Refraining from engaging in nepotism. (Charter §711)

(q) Appointing to and creating the various boards and commissions of the city and providing for their funding in the city budget. (Charter §§800, 801, 802)

(r) Establishing by ordinance a comprehensive personnel system. (Charter §1000)

(s) After public hearings, reviewing, considering and adopting the annual budget of the city. (Charter §§1202, 1203, 1204) At any subsequent meeting after adoption, the City Council may amend or supplement the budget. (Charter §1205)

(t) Adopting by ordinance a centralized purchasing system. (Charter §1206)

(u) Refraining from levying a property tax for municipal purposes in excess of One Dollar (\$1) on each One Hundred Dollars (\$100) of assessed value of property within the city without voter authorization. (Charter §1207)

(v) Establishing by ordinance the procedure for assessment, levy and collection of taxes upon property within the city. (Charter §1208)

(w) Establishing by ordinance procedure for the issuance of revenue bonds. (Charter §1209)

(x) Establishing a contingency fund for the purpose of placing the payment of running expenses of the city on a cash basis. (Charter §1212) Establishing a capital outlay fund and such other funds by ordinance for special capital outlay purposes. (Charter §1213) The City Council may transfer to any such fund any unencumbered surplus funds on hand at any time. (Charter §1213) The City Council may by ordinance establish the Treasurer's departmental trust fund for the collections and deposits of the police, license, building and other departments' deposits. (Charter §1214) The City Council may by ordinance establish any other funds not inconsistent with city Charter provisions. (Charter §1215)

(y) Accepting and rejecting all claims against the city. (Charter §1216) The City Clerk is authorized to act on behalf of the City Council in rejecting for insufficiency or denying claims filed against the city pursuant to Government Code §§900 et seq. (Resolution No. 4051, 7 Apr 75)

(z) Providing for an independent audit of the city each fiscal year. (Charter §1219)

(aa) Granting franchises for public services after public hearings, when appropriate. (Charter §1400)

1.01.05 Duties of the Mayor. On the first Monday after

any municipal election where a Council member is elected and at any time where there is a vacancy in the office of Mayor, the City Council shall meet and elect one of its members Mayor.

The Mayor is the ceremonial head of the city and shall have the primary, but not exclusive, duty to interpret the policies, programs and needs of city government to the people.

The Mayor may make and second motions and shall have both voice and vote in all Council proceedings. The Mayor serves at the pleasure of the City Council. (Charter §504)

The Mayor may call special meetings of the City Council. (Charter §518)

The Mayor may execute contracts on behalf of the city. (Charter §518)

Where the Mayor, Mayor Pro Tempore and City Clerk are absent from the city, all papers and documents required to be executed by them may be executed by facsimile signature. (Resolution No. 3200, 3 Aug 70)

1.01.06 Duties of Mayor Pro Tempore. The Mayor Pro Tempore shall perform the duties of the Mayor during his absence or disability.

1.01.07 Compensation of Councilpersons. For their service to the city, Councilpersons shall receive the sum of \$125 monthly for ordinary and routine expenses, and in addition to such sum, shall receive reimbursement for council-authorized travel and other expenses provided an itemized account is first submitted for such reimbursement, and is approved by the Council at the first regular meeting of the month following the month during which such expense was incurred.

Councilpersons shall also receive all fringe benefits granted to department heads of the city, and such fringe benefits shall be included in the annual budget. (Ordinance No. 2079, 18 Aug 76)

Chapter 1.02

CODE OF ETHICS

1.02.01 Purpose of code. The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people. The purpose of this code is to establish ethical standards of

conduct for all such officials.

1.02.02 Definition. The municipal officials and employees of the City of Huntington Beach, whether elected or appointed, are "public officials and employees" within the meaning of this code.

1.02.03 Responsibilities of public office.

(a) Public officials and employees are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach.

(b) Public officials are bound to uphold the Constitution of the United States and the Constitution of the State of California and to carry out impartially the laws of the nation, state and municipality.

1.02.04 Dedicated service. Public officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from doing so by law or by officially recognized confidentiality of their work.

1.02.05 Fair and equal treatment--Unilateral communications. No public official or employee should encourage, make, or accept any application or communication from any party made out of the presence and without the knowledge of other parties in a matter under consideration when such application or communication is designed to influence official decision or the conduct of the official himself, or other officials, employees, or agencies in order to obtain favored treatment or special consideration to advance the personal or private interests of himself or others.

Any written unilateral communication received by a public official or employee in matters where all interested parties should have equal opportunity for a hearing should be made part of the record by the recipient. Any oral unilateral communication received under such conditions should be written down in substance by the recipient and also made part of the record.

1.02.06 Standards of conduct. Every officer of the city shall attempt to be courteous and avoid making rude or personal remarks. When speaking at a public meeting, the officers of the

city shall attempt to speak to the issue and avoid making comments for the benefit of the audience or the press.

Chapter 1.03

COUNCIL MEETING

1.03.01 Agenda. All items and supporting documents thereto must be filed with the City Clerk by 5 p.m. on the Monday preceding a council meeting to be included on that meeting's agenda.

Any item of an emergency nature that must be acted upon at the next council meeting may be included by making arrangements with the City Administrator. (Resolution No. 2520, 6 March 67)

Oral communications to the Council must be submitted for inclusion on the agenda, if not related to an item already on the agenda. The Mayor or chairperson may use discretion to allow or disallow oral communication on an agenda item where the request for oral communication has not been filed, as required in this section.

1.03.02 Time and place of council meeting. Regular council meetings shall be held in the City Council Chambers on the first and third Mondays of each month at 7 p.m. except where a meeting falls on a holiday it shall be held on the next business day. (Resolution No. 4161, 17 Nov 75)

The time and place of special City Council meetings shall be decided when called and the call and notice shall specify such time and place. (Charter §507)

All matters not on the floor by 11 p.m. will automatically be continued to the next council meeting. (Minute Action, 6 May 74)

Chapter 1.04

PARLIAMENTARY PROCEDURE

1.04.01 Roberts Rules of Order Revised. In all matters of parliamentary procedure which are not expressly provided for in the city Charter or the ordinances or resolutions of the city, the procedure contained in "Roberts Rules of Order Revised," as it now exists or future revisions thereof, shall control.

1.04.02 Parliamentarian. The City Attorney is parliamentarian for the City Council, and upon the request of the Mayor or upon his own initiative, shall make rulings on points of parliamentary procedure.

1.04.03 Motions. Motions may be made by any member of the Council and require a second except when a second is not required by "Roberts Rules of Order Revised." A motion may be withdrawn by the mover with the consent of the second and in the absence of objection from any other member of the Council.

1.04.04 Vote required--Nonemergency. For all nonemergency ordinances, resolutions or orders for the payment of money, four (4) affirmative votes are required. (Charter §511)

1.04.05 Emergency ordinances. Any ordinance declared by the City Council to be necessary as an emergency measure for the immediate preservation of the public peace, health and safety, and containing a statement of the reasons for its urgency, may be introduced and adopted at one and the same meeting if passed by at least five (5) affirmative votes. (Charter §511)

1.04.06 Adoption of ordinances. With the sole exception of emergency ordinances which take effect upon adoption, no ordinance shall be adopted by the City Council on the day of its introduction nor within five (5) days thereafter nor at any time other than a regular or adjourned regular meeting. (Charter §511)

1.04.07 Reading of ordinances and resolutions. At the time of introduction or adoption of an ordinance or resolution, it shall be read in full, unless after the reading of the title thereof, the further reading thereof is waived by unanimous consent of the councilpersons present, except that emergency ordinances shall be read in full. (Charter §511)

1.04.08 Alteration of ordinance after introduction. In the event that any ordinance is altered after its introduction, the same shall not be finally adopted except at a regular or adjourned regular meeting being held not less than five (5) days after the date upon which such ordinance was so altered. The correction of typographical or clerical errors shall not constitute the making of an alteration within the meaning of this section. (Charter §511)

1.04.09 Repeal of resolutions and ordinances. A resolution may be repealed by another resolution or an ordinance. If repeal is by resolution without advance notice, five affirmative votes; with notice (in the formal Council agenda), four

affirmative votes. An ordinance may be repealed only by another ordinance.

1.04.10 Orders for payment of money. No order for the payment of money shall be adopted or made at any other than a regular or adjourned regular meeting. (Charter §511)

1.04.11 The vote. The vote on all motions shall be by roll call, and may be recorded by electronic or mechanical means.

1.04.12 Division of question ("split vote"). If the question contains two (2) or more divisible propositions, the Mayor may, and at the request of any councilperson shall, divide the question (also called "split vote"). Example:

(1) Waive further reading of ordinance/resolution (requires unanimous vote).

(2) Adopt.

1.04.13 Tie votes. If a vote is a tie, the motion fails except that on appellate matters a tie vote on a motion to sustain the lower body's decision has the effect of sustaining the decision of the lower body. A tie vote on a negative motion does not approve the affirmative side of the motion. Thus a tie vote on a motion to disapprove or not to do something does not automatically adopt the opposite. After such tie vote the question should be made in the affirmative mode.

1.04.14 Nomination and election. Nomination and election for the offices of mayor and mayor pro tempore, pursuant to Section 504 of the Charter, shall follow the following procedure:

(a) At the time set for nomination and election, the mayor and mayor pro tempore shall vacate their respective offices as such, and the City Clerk or other presiding officer shall call the Council to order and proceed to conduct an election for the office of mayor.

(b) Any member may nominate any other member, no seconds being required, and nominations shall be open until a motion to close shall be adopted.

(c) The vote shall then be conducted on the nominees by secret ballot and if no nominee secures a majority of votes cast, the two nominees with the highest number of votes shall be voted on by secret ballot.

(d) All votes on nominees shall be by secret ballot.

(e) No write-in votes shall be counted and any such write-in votes shall be considered as a failure to vote.

(f) In case of tie for the second highest vote, run-off ballots on such tie nominees shall be cast to break the tie. The tie is broken when one tie nominee receives the highest number of votes cast on such ballot. When such tie is broken, a vote shall be taken on the nominee who has the highest vote and the tie-breaking nominee.

(g) In case of a tie of more than two (2) nominees for the highest vote, a vote shall be taken on such tie nominees, eliminating all others.

(h) All run-off or tie-breaking ballots are subject to the same elimination rules as apply to the first ballot.

(i) Successive ballots shall be cast until a nominee is elected.

(j) A nominee shall be elected at any time such nominee has a majority of votes cast on any ballot in which all nominees eligible for a final ballot are in competition.

(k) Each member shall be entitled to nominate one nominee for each office. No member shall nominate himself.

(l) A mayor pro tempore shall then be selected by the same process as set forth in this section for the office of mayor.

(m) The mayor and mayor pro tempore, following such proper election, shall serve for terms of one (1) year and until such time as their successors have been elected and qualified and installed.

1.04.15 Rights of Mayor. The Mayor has the right to make motions, second motions and vote on motions. The practice of some deliberative bodies where the chairman does not vote except to break a tie does not apply to the City Council.

1.04.16 Quorum. A quorum for all meetings of the City Council is four (4) councilpersons.

1.04.17 Ralph M. Brown Act. Any meeting, gathering or coming together of four (4) or more councilpersons at which city business is discussed is subject to the Brown Act. A full discussion of the Brown Act and its rules and requirements is found at Appendix of this manual.

1.04.18 Fines, penalties and franchises. In addition to such other acts of the City Council as are required by the Charter to be taken by ordinance, every act of the City Council establishing a fine or other penalty, or granting a franchise, shall be by ordinance. (Charter §512)

1.04.19 Other actions. Actions which are not required by the city Charter or city ordinances to be in the form of ordinances or resolutions may be effectuated by minute action.

1.04.20 When minute action is a resolution. In all situations where an action of the City Council under the express provisions of the city Charter or ordinances shall or may be by resolution, a "minute action" of the City Council adopted by at least four (4) affirmative votes, shall be deemed a resolution for all purposes, and such action shall not fail merely because it lacks the form or title of a resolution.

1.04.21 Minute actions. Minute actions require the affirmative votes of a majority of councilpersons present and voting, but not less than three (3), except when less than a quorum is present, the lesser number may adjourn from time to time.

1.04.22 Motion to rescind. A motion to rescind a minute action without advance notice requires five affirmative votes; with notice (in the formal Council agenda), four affirmative votes.

1.04.23 Motion to reconsider. A motion to reconsider, when appropriate under Roberts Rules of Order Revised, may be made at the same meeting or no later than the next regular meeting of the City Council by a councilperson who voted on the prevailing side of the motion to which it applies. The vote required to adopt a motion to reconsider shall be a simple majority of councilpersons present and voting except that such motion shall require four (4) affirmative votes in order to reconsider any motion which required four (4) affirmative votes for adoption. A motion to reconsider may be made only once with respect to any motion to which it applies; however, a motion to reconsider a main motion does not preclude the making of a motion to reconsider the main motion as amended. A motion to amend may be reconsidered. A motion to reconsider a motion to reconsider is not permitted. The vote on the motion to reconsider shall be taken at the time the motion to reconsider is made except that the vote on a motion "to reconsider and enter upon the minutes" shall be taken at the next regular meeting of the City Council. The effect of the adoption of a motion to reconsider is to vacate the vote taken on the motion to which it applies and to present the motion to which it applies to the

body for action as if no vote had been taken on it. The new vote on the motion to which it applies neither sustains nor overrules such motion because the old vote is vacated and the new vote is taken as though no previous vote had been taken.

1.04.24 Vote required on appellate matters. Where action has been taken by a lower body that would be final if not appealed, such as decisions by the Board of Zoning Adjustments or the Planning Commission, and is subsequently appealed to the higher body, the following procedure applies:

(a) If the motion is to sustain the lower body's decision, a majority of those present and voting is sufficient (four (4) affirmative votes not required). It is not necessary to make a motion to overrule. When there is a tie vote, the lower body is sustained. However, if the motion to sustain gets less than a tie vote, a motion to overrule must be made.

(b) If the motion is to overrule the decision of the lower body, four (4) affirmative votes are required. If there are less than four (4) affirmative votes, the decision of the lower body is deemed sustained and no further vote is required.

(c) If a motion is made to modify the decision of the lower body, two separate steps must be taken:

(1) First, the motion to modify requires four (4) affirmative votes.

(2) Second, if the motion to modify is adopted, a motion to sustain the decision of the lower body as modified requires the same vote as the motion to sustain.

(3) A motion to overrule the decision of the lower body, as modified, requires four (4) affirmative votes. If there are less than four (4) affirmative votes, the decision of the lower body, as modified, is deemed sustained without further vote.

(4) If a motion to modify fails, the next motion is either to sustain or to overrule the subordinate body.

1.04.25 Appointments to boards and commissions. When a vacancy occurs for any reason on any board or agency over which Council has power to fill by appointment, the following procedure shall be followed to fill such vacancy:

(a) At the first Council meeting following the notification to the Council of such vacancy, public announcement shall

be made of said vacancy and a request made for any interested persons to submit a resume of their qualifications to the Council prior to the next regular meeting of the Council.

(b) The Council shall, as soon as is reasonably possible, fill any such vacancies but nothing herein shall be construed to limit its choice to a person who has submitted an application, as outlined above.

(c) Interviews of candidates for positions on boards or commissions shall be held in public at regular or adjourned regular meetings of the City Council. A list of uniform questions developed by the appropriate department will be asked of each applicant to be interviewed. Applicants will be rated on a numerical scale which will be made public.

Chapter 1.05

ROLE OF THE CITY ADMINISTRATOR

1.05.01 Appointment and removal. The City Administrator is the chief administrative officer in the city. He shall be appointed by the affirmative vote of at least a majority of the members of the City Council and shall serve at the pleasure of the City Council. He shall not be removed from office during or within any ninety (90) day period following any municipal election when a councilperson is elected. He may be removed only at a regular meeting by majority vote and thirty (30) days prior to termination, he must be given notice of intent to remove and, if requested, the reasons therefor. Within seven (7) days after receipt of such notice, the City Administrator may request a public hearing before the City Council within the thirty (30) day period before his removal. The City Council may suspend him but his compensation will continue until removal. The City Council has uncontrolled discretion regarding such removal. (Charter §§600, 606)

1.05.02 Compensation and residence. Although the City Administrator need not reside in Huntington Beach upon appointment, he must take up residence in the city within ninety (90) days unless that period is extended by the City Council. The City Council shall set the salary of the City Administrator by ordinance or resolution and shall set the form and amount of the corporate surety bond required of the City Administrator. (Charter §§601, 603)

1.05.03 Duties. The City Administrator shall be responsible to the City Council for the proper administration of all

affairs of the city. His duties include, but are not limited to: appointment, promotion, demotion, suspension and removal of all employees and department heads except where this function is vested in the City Council. Appointment or removal of a department head requires City Council approval. The City Administrator shall prepare and submit to the City Council the city budget, an annual or more frequent report on city finances and a report on current administrative activities. He shall keep the City Council informed of the financial condition and future needs of the city and make appropriate recommendations. He shall establish a centralized purchasing system and prepare rules and regulations regarding contracting, purchasing, and attendant controls for City Council approval and adoption by ordinance. He shall supervise the enforcement of the law of the state, city ordinances, charter provisions, franchises and rights of the city. He shall, subject to policy established by the City Council, exercise control over all administrative offices and departments, all appointive officers and employees not appointed directly by the City Council, and prescribe general rules and regulations for the conduct of such offices and departments. He shall perform such other duties consistent with the city Charter as may be required by the City Council. (Charter §604)

1.05.04 Meetings. The City Administrator shall be accorded a seat without a vote at all meetings of the City Council and all boards and commissions except where his removal is under consideration. (Charter §605)

1.05.05 Noninterference with administrative service. Except for the purpose of inquiry, no member of the City Council shall deal with the administrative service under the control of the City Administrator except through the City Administrator.

No member of the City Council shall give orders to a subordinate of the City Administrator either publicly or privately and except as otherwise provided in the city Charter, no member of the City Council shall order the appointment or removal of any person to any office or employment with the city. (Charter §607)

1.05.06 Acting city administrator. The City Administrator may appoint, subject to City Council approval, any officer or department head to serve in his absence as acting city administrator. If he fails to do so, the City Council may make such appointment. (Charter §608)

Chapter 1.06

ROLE OF THE CITY ATTORNEY

1.06.01 Term. The City Attorney is the attorney for the municipal corporation known as the City of Huntington Beach. He shall be elected from the city at large, as provided by the city Charter, and shall serve for a term of four (4) years and until his successor qualifies. (Charter §500)

1.06.02 Powers and duties. The City Attorney's duties include, but are not limited to: representing and advising the City Council in all matters of law pertaining to their offices. He shall prosecute on behalf of the people all criminal matters arising from violations of ordinance or Charter provisions or state law misdemeanors within the city's power to prosecute unless otherwise provided by the City Council. He shall represent and appear for the city in all actions or proceedings in which the city is concerned or is a party, and shall appear on behalf of any present or former city employees in any action or proceeding arising out of their employment or by reason of their official capacities. He shall attend all regular meetings of the City Council unless excused, and act as parliamentarian, and his decision rendered with respect to parliamentary procedures, shall be final. He shall give his advice or opinion orally or in writing whenever requested to do so by the City Council or any of the boards or officers of the city. He shall approve as to form all contracts made by and all bonds and insurance given to the city, and prepare all ordinances, resolutions and amendments thereto. He shall devote such time to his duties and at such place as the City Council directs by vote of that body, and perform such legal functions and duties incident to the exercise of the foregoing powers as may be necessary. He shall surrender to his successor all files, books and documents pertaining to city affairs.

The City Council shall control all legal business, proceedings and all property of the legal department, and may employ other attorneys to take charge of or contract for prosecutions, litigation or other legal matters. (Charter §703)

1.06.03 Requests for ordinances and resolutions. All requests of the City Attorney's office by members of the City Council for preparation of ordinances and resolutions should be by minute action of the Council.

Chapter 1.07

ROLE OF THE CITY TREASURER

1.07.01 Term. The City Treasurer is the custodian of public funds of the City of Huntington Beach. He shall be elected from the city at large, as provided in the city Charter, and shall serve for a term of four (4) years and until his successor qualifies. (Charter §500)

1.07.02 Powers and duties. The City Treasurer shall have the power and shall be required to receive on behalf of the city all taxes, assessments, license fees and other revenues of the city, or for which the city is responsible. He shall receive all taxes or other money receivable by the city from the county, state, Federal government or any court or other department, office or agency of the city. He shall have control of all funds coming into his hands and deposit them in such depository as the City Council designates by resolution or, if none is fixed, as the City Administrator directs. The City Treasurer shall act in compliance with the state Constitution and law in handling, depositing and securing the public funds. He shall pay out proper orders or warrants as provided in the city Charter, prepare and submit to the Finance Director monthly reports of all receipts, disbursements and fund balances with a copy to the City Administrator. He shall perform such other duties consistent with the city Charter as the City Council directs by ordinance or resolution, and appoint such deputies at such salaries as the City Council may prescribe by ordinance or resolution. (Charter §705)

Chapter 1.08

ROLE OF THE CITY CLERK

1.08.01 Term. The City Clerk is the official recorder and keeper of the records of the City of Huntington Beach. He shall be elected from the city at large as provided in the city Charter, and shall serve for a term of four (4) years and until his successor qualifies. (Charter §500)

1.08.02 Powers and duties. The Clerk's duties include but are not limited to: attending all meetings of the City Council unless excused, and keeping a full and true record of such proceedings. Recording and maintaining all ordinances, resolutions, written contracts and official bonds. Keeping all books and records properly indexed and open to public inspection.

The Clerk shall be the custodian of the city seal, and administer oaths, affirmations, take affidavits and depositions pertaining to city affairs and certify copies of official records. The Clerk shall be ex officio assessor unless the City Council by ordinance provides otherwise. The City Clerk shall have charge of all city elections and shall canvass the votes after all general or special municipal elections and report the results to the City Council for certification. (Resolution No. 2967, 21 April 69) The City Clerk shall issue subpoenas on behalf of the city upon the request of an authorized person with the approval of the City Attorney. (Resolution No. 3393, 15 Nov 71) The City Clerk shall accept and consent to deeds and grants of real property to the city for public purposes. (Resolution No. 3537, 7 Aug 72). The City Clerk may, with the consent of the City Council, appoint such deputies at such salaries as the City Council may prescribe by ordinance or resolution, and perform such other duties, consistent with the city Charter as the City Council may require by ordinance or resolution. (Charter §704)

TABLE OF CONTENTS TO
APPENDIX TO COUNCIL MANUAL

<u>TITLE</u>	<u>PAGE NO.</u>
Resolution No. 4311, Budget Control	1
Motion to Reconsider	5
Removal of Members of Boards and Commissions	7
Expiration of Terms of Members of the Recreation and Parks Commission	9
City Attorney Opinion No. 73-42	10
Parliamentary Procedure--Script for Mayor	12
Ralph M. Brown Act	15
City Reimbursement for Expenses of Councilperson's Spouse, Memo	39
NIMLO Letter Re City Reimbursement for Expenses of Councilperson's Spouse	40
City Council/Department Head Retreat--Brown Act, City Attorney Opinion No. 76-40	42
Procedure for Handling Executive Sessions of City Council, Letter	48
Resolution No. 4283, Conflict of Interest Code	50

RESOLUTION NO. 4311

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH AMENDING RESOLUTION NO. 4309 ENTITLED, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH AMENDING RESOLUTION NO. 3993 ENTITLED 'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH IN REGARD TO BUDGET CONTROL'"

WHEREAS, the purpose of this resolution is to insure responsible fiscal control of unbudgeted items presented to the City Council in the form of ordinances, resolutions, minute actions, appropriations, orders for the payment of money, and any means whatever by which the Council is able to act, and where such action shall or may have an impact upon the budget. The basic assumption underlying this resolution is that informed and intelligent action must be preceded by and based upon fiscal data and information, and upon an understanding and appreciation of the impact of such action upon the budget. It is recognized that an integrated and orderly budgetary process requires a budget in balance and that any action of the City Council that shall or may disturb or affect such balance must be preceded by thorough study and analysis. Where unbudgeted expenditures are authorized by the City Council, it is and shall be the policy of the city that adequate provision must first be made for the funding of such proposals through the budgetary process to the end that the budget be and remain in balance. It is a policy of the City of Huntington Beach that the Council shall not create a deficit in the city's budget by any action of the Council. This statement constitutes the official policy of the City of Huntington Beach.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the

City of Huntington Beach as follows:

SECTION 1. ACTIONS TO UNBALANCE BUDGET PROHIBITED. The City Council shall not take any action whether by adoption of ordinance, resolution, minute action, appropriation, order for the expenditure of money, or otherwise, which will result in anticipated expenditures for the current fiscal year exceeding the total of anticipated revenues for the current fiscal year plus all other available funds.

SECTION 2. FINANCIAL ANALYSIS REQUIRED. The City Administrator with the assistance of the staff shall prepare and transmit to the City Council, together with any ordinance, resolution, appropriation, request for order of expenditure of money, or any other request for action which is not funded in the current fiscal year's budget, a detailed financial analysis of the proposed action, giving the impact, both positive and negative, upon the city's budget. A cash flow time analysis shall be included to compare proposed cash outlay timing with cash receipt schedule from the revenue source proposed. Such analysis shall be contained in a report entitled, "Financial Impact Report."

SECTION 3. REVIEW OF FINANCIAL IMPACT REPORT BY CITY COUNCIL REQUIRED FOR UNBUDGETED ITEMS. The City Council shall not adopt any ordinance, resolution, appropriation, order for payment of money, minute action or any other action, without first reviewing the Financial Impact Report and without first making adequate provision for the funding necessary to support such action and to keep the budget in balance. The provisions contained herein shall apply to unbudgeted items and to items which cost more money than the amount budgeted for such items.

SECTION 4. AMENDMENTS TO BUDGET. Whenever during the fiscal year anticipated revenues fall below projections, the Finance Director shall transmit to the City Council proposed amendments in the city's budget which will bring the budget into

balance so that no deficit shall be created or maintained.

SECTION 5. This resolution shall not apply to any proposed unbudgeted expenditure less than Five Hundred Dollars (\$500) unless such proposed expenditure may reasonably be expected to result in other related or continuing expenditures.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at an adjourned regular meeting thereof held on the 23rd day of August, 1976.

Harold H. Warden
Mayor

ATTEST:

APPROVED AS TO FORM:

Alicia M. Chantworth
City Clerk

D. J. Boy
City Attorney

APPROVED AS TO CONTENT AND
AS INITIATING DEPARTMENT:

Joseph S. Smith
City Administrator

NO FISCAL IMPACT _____
FISCAL IMPACT -- BUDGETED _____
FISCAL IMPACT -- NOT BUDGETED _____
REQUIRES FINANCIAL IMPACT REPORT _____

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)

I, ALICIA M. WENTWORTH, the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of more than a majority of all the members of said City Council at a regular adjourned meeting thereof held on the 23rd day of August, 1976, by the following vote:

AYES: Councilmen:

Bartlett, Pattinson, Siebert, Wieder

NOES: Councilmen:

None

ABSENT: Councilmen:

Coen, Gibbs, Shenkman

Alicia M. Wentworth

City Clerk and ex-officio Clerk
of the City Council of the City
of Huntington Beach, California

MOTION TO RECONSIDER

In "Roberts Rules of Order, Newly Revised" (the controlling authority), the motion to reconsider is classified as a motion "that brings the question again before the assembly," it being one of the four motions so classified and which serve "the functions described by the name of the class." (Section 6, page 64, Roberts Rules of Order, Newly Revised) All citations in this paper are to Roberts Rules of Order, Newly Revised, copyright 1970, unless otherwise stated.

The motion to reconsider is briefly described by function as follows:

"If, in the same session that a motion has been voted, but no later than the same or the next calendar day, new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can propose to reconsider the vote; i.e., he can move that the questions shall come before the assembly again as if it had not previously been considered." (Emphasis added.) (Section 6, page 66)

The motion to reconsider (as applied to a main motion) does not bring a question again before the assembly by its introduction, but by its adoption, which automatically causes the main question to become pending. (See Section 6, page 66.)

The motion to reconsider can, with certain exceptions, be applied to a vote that was either affirmative or negative, within a limited time after that vote, and it proposes no specific change in a decision but simply proposes that the original question be reopened. (See Section 6, page 67.) Thus, the motion to reconsider does not require the same or a greater vote for its adoption than the vote which was previously cast on the main motion and does not violate the principle of parliamentary law that:

"To change what the assembly has adopted requires something more (in the way of a vote or previous notice to the members) than was necessary to adopt it in the first place." (See Section 6, page 64.)

A main motion can be reconsidered (see Section 7(8) at page 69). The motion to reconsider requires only a majority vote, regardless of the vote necessary to adopt the motion to be reconsidered. (See Section 36(7) at page 270.)

The effect of making a motion to reconsider is the suspension of all action that depends on the result of the vote proposed to be reconsidered either until the assembly takes up the motion to reconsider or until its effect terminates. When a motion to reconsider is made and a resulting suspension of action, it remains in effect until the motion to reconsider has been voted on and if that motion is adopted until the reconsideration is completed (see Section 36, pages 270 and 271).

The effect of the adoption of the motion to reconsider is immediately to place before the assembly again the question on which the vote is to be reconsidered--in the exact position that it occupied the moment before it was voted on originally. (Emphasis added.) (See Section 36, page 274)



CITY OF HUNTINGTON BEACH
INTER-DEPARTMENT COMMUNICATION

To HONORABLE MAYOR WIEDER

From DON P. BONFA
City Attorney

Subject Removal of Members of Boards
and Commissions

Date July 16, 1976

You have asked whether or not City Council may remove members of boards and commissions prior to the expiration of their terms.

Answer: Yes

Discussion:

Charter mandated boards and commissions, namely, the Planning Commission (§806 City Charter); Library Board (§807 City Charter); and Personnel Board (§808 City Charter) are governed by §802 City Charter which in relevant part provides that the members of boards and commissions "shall be subject to removal by motion of the City Council adopted by the affirmative votes of the majority of the total membership thereof." No cause is necessary.

The Recreation and Parks Commission is not charter mandated but is created by ordinance. Removal of members of the Recreation and Parks Commission is governed by §2.64.070 of the Huntington Beach Municipal Code which provides:

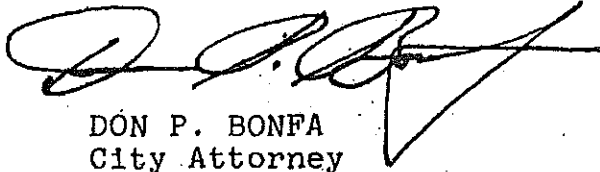
"The term or terms of office specified herein shall not be deemed arbitrary and should the mayor, with the approval of the city council determine that it would be for the best interest of the department that a member be retired, he may so order and appoint a successor for the unexpired term of office of such retired member."

Therefore, in order to remove a member of the Recreation and Parks Commission the Mayor must make a determination that "it would be for the best interest of the department" that the member be retired, and then the Mayor may so order with the approval of the City Council. After removal the Mayor may appoint a successor for the unexpired term of office of such removed member. By implication the Mayor's appointment of a successor should be with approval of the City Council.

Generally, we know of no board, or commission or committee whose members are appointed by the City Council, which is immune from

City Council's power of removal. The power to appoint normally carries with it the concomitant power to remove. Inasmuch as the Mayor's question did not specify a particular board or commission for analysis, we deem this brief opinion to be sufficient in detail. However should a particular board or commission, not named in this opinion, be the subject of inquiry, we shall be pleased to address ourselves specifically to such board or commission.

Respectfully submitted,



DON P. BONFA
City Attorney

DPB:bt



CITY OF HUNTINGTON BEACH
INTER-DEPARTMENT COMMUNICATION

NORMAN WORTHY, Director
To Recreation and Parks Department

From DON P. BONFA
City Attorney

Subject: Expiration of Terms of
Members of the Recreation
and Parks Commission

Date July 12, 1976

You have asked whether or not the terms of the members of the Recreation and Parks Commission continue until their respective successors are appointed.

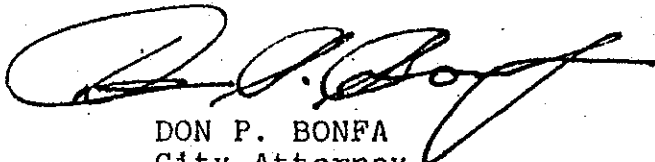
Answer: Yes.

Discussion:

Section 802, under Article VIII, of the City Charter provides with respect to boards or commissions that their terms shall continue "until their respective successors are appointed and qualified."

Roberts Rules of Order (Newly Revised Edition), at page 417, Section 49, provides, as a general principle, that members of old committees continue their duties until their successors are chosen.

However, Huntington Beach Municipal Code Chapter 2.64, which refers to the Recreation and Parks Commission, does not indicate that the terms of members shall continue "until their respective successors are appointed." In our opinion, the continuation of terms until the successors are appointed is necessary to the continuity of a standing board or commission and is by analogy mandated by Article VIII of the City Charter. Furthermore, in the absence of an express declaration to the contrary in Chapter 2.64 of the Huntington Beach Municipal Code, Roberts Rules of Order (Newly Revised Edition) prevails.



DON P. BONFA
City Attorney

DPB:er

OFFICE OF THE CITY ATTORNEY

OPINION NO. 73-42

May 21, 1973

SUBJECT: Provisions Applicable to Maintain Decorum
During City Council Meetings

TO: City Council

FROM: Don P. Bonfa, City Attorney
John J. O'Connor, Deputy City Attorney

In view of the emotionally charged atmosphere of the City Council meeting of March 19, 1973 (discussion relative to the cat ordinance), Mr. Rowlands has requested a legal memorandum be directed to the City Council setting forth available methods of retaining order during Council proceedings.

Where the activity interferes with the right of City Council to carry on its public business in an orderly and dignified manner, because of disruptive conduct by demonstrators, such as blocking of free passage of the aisles and exits, yelling, booing, applauding or attempting to address the Council without proper recognition, there are two provisions of the Penal Code which may be applicable to retain decorum in the Council chambers.

1. Penal Code §415 makes it an offense to disturb the peace and in an appropriate situation this section may be invoked.
2. Penal Code §403 provides:

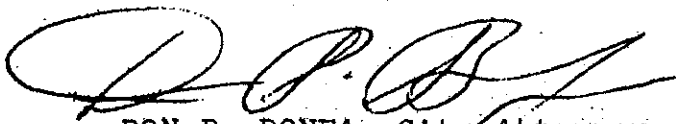
"Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character... is guilty of a misdemeanor."
3. In addition to the foregoing provisions of the Penal Code, Section 54957.9 was recently added to the Government Code.

Government Code §54957.9 reads:

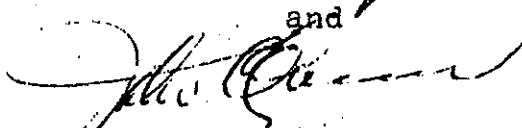
"In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting."

The existing provisions of the Penal Code and Section 54957.9 of the Government Code appear adequate to control any disturbance of Council meetings. Some cities have a specific local ordinance regulating conduct at Council meetings, and if Council desires a specific ordinance regulating public conduct during Council meetings, this office will be pleased to prepare same at the direction of Council.

Respectfully submitted,


DON P. BONFA, City Attorney

and


JOHN J. O'CONNOR, Deputy City Attorney

DPB:JJO:lm

Parliamentary Procedure

Script for Mayor

- A. ORDINANCES FOR ADOPTION
- B. ORDINANCES/RESOLUTIONS FOR INTRODUCTION

A. ORDINANCES FOR ADOPTION

MAYOR: Next item on the agenda is ordinances for adoption. Does any council member wish to consider any ordinance separately?

COUNCILPERSON 1: Please withhold Ordinance No. 2091.

MAYOR: Very well. Madam Clerk, please read the rest of the ordinances by title.

CLERK: (Reads the rest of the ordinances by title.)

MAYOR: A motion is in order to waive further reading and adopt.

COUNCILPERSON 1: So moved.

COUNCILPERSON 2: Second.

MAYOR: Please vote. (After a pause to allow voting) Madam Clerk, please record the vote.

CLERK: (After recording the vote) Seven ayes (must be unanimous).

MAYOR: (To councilperson who withheld Ordinance No. 2091) Your pleasure, Councilperson Jones, on Ordinance No. 2091?

COUNCILPERSON 1: Ask for division of the question (or, ask for split vote).

MAYOR: Very well. Madam Clerk, please read Ordinance No. 2091 by title.

CLERK: (Reads Ordinance No. 2091 by title.)

MAYOR: Thank you. A motion is in order to waive further

Script for Mayor contd.

reading.

COUNCILPERSON 1: So moved.

COUNCILPERSON 2: Second.

MAYOR: Please vote. (After a pause to allow for voting)
Madam Clerk, please record the vote.

CLERK: (Records the vote) Seven ayes (must be unanimous).

MAYOR: A motion is in order to adopt Ordinance No. 2091.

COUNCILPERSON 1: So moved.

COUNCILPERSON 2: Second.

MAYOR: Please vote. (After a pause to allow for voting)
Madam Clerk, please record the vote.

CLERK: (Records the vote) Six ayes, one no.

B. ORDINANCES FOR INTRODUCTION

MAYOR: Next item on the agenda is ordinances for introduction. Does any council member wish to consider any ordinance separately? Hearing none, Madam Clerk, please read the ordinances by title.

CLERK: (Reads by title.)

MAYOR: A motion is in order to waive further reading.

COUNCILPERSON 1: So moved.

COUNCILPERSON 2: Second.

MAYOR: Please vote. (After a pause to allow for voting)
Madam Clerk, please record the vote.

CLERK: (Records the vote) Seven ayes (must be unanimous).

B. RESOLUTIONS FOR INTRODUCTION

MAYOR: A motion is in order to waive further reading and adopt.

COUNCILPERSON 1: So moved.

Script for Mayor contd.

COUNCILPERSON 2: Second.

MAYOR: Please vote. (After a pause to allow for voting)
Madam Clerk, please record the vote.

CLERK: (Records the vote) Seven ayes (must be unanimous).

If any councilperson wishes to vote against any resolution,
he should ask that the resolution in question be withheld, and
then the procedure is as follows:

MAYOR: Madam Clerk, please read Resolution No. 1111
by title.

CLERK: (Reads Resolution No. 1111 by title.)

MAYOR: A motion is now in order to waive further reading
of Resolution No. 1111.

COUNCILPERSON 1: So moved.

COUNCILPERSON 2: Second.

MAYOR: Please vote. (After pause to allow for voting)
Madam Clerk, please record the vote.

CLERK: (Records the vote) Seven ayes (must be unanimous).

MAYOR: A motion is in order to adopt Resolution No. 1111.

COUNCILPERSON 1: So moved.

COUNCILPERSON 2: Second.

MAYOR: Please vote. (After pause to allow for voting)
Madam Clerk, please record the vote.

CLERK: (Records the vote) Six ayes, one no.

END OF SCRIPT

15 December 1975

TO: Members of the City Council
City Administrator

FROM: City Attorney

SUBJECT: Ralph M. Brown Act

Transmitted herewith is a paper, dated August 1975, on the Ralph M. Brown Act--Open Public Meetings, from the League of California Cities, containing:

1. An explanatory letter from Bill Keiser, Legislative Counsel and Don Benninghoven, Executive Director of the League. Note that the Attorney General monograph published in 1972 (see footnote on page 2 of the Keiser-Benninghoven letter) was mailed to you by the City Attorney about two years ago.

2. The text of the Brown Act, California Government Code Sections 54950 et seq. to which we have added the amendments and additions which will go into effect January 1, 1976.

3. A very good paper written by Frank Gillio, City Attorney of Los Altos Hills and Millbrae.

The new provisions which go into effect January 1, 1976 are summarized as follows:

1. Section 54952.3 is amended to include in the definition of "legislative body" any advisory commission, advisory committee or advisory body of a local agency created by a member of the governing body.

2. Section 54957 is amended to narrow the "personnel" exception to the open meeting requirement by excluding, in effect, from executive sessions and thus requiring an open meeting for the consideration of the "appointment, employment or dismissal of or to hear complaints or charges brought against" any person appointed to an office by the legislative body; provided, however, that nonelective positions of city manager, city attorney or department heads shall be considered employee positions.

We interpret this to mean that open meetings are required in cases of the "appointment, employment or dismissal or to hear

Members of the City Council
and City Administrator
Ralph M. Brown Act

15 December 1975
Page 2

complaints or charges brought against" (a) members of boards, commissions, committees, and (b) elective positions of councilperson, city attorney, city clerk and city treasurer. Of course, the only authority the Council has with respect to elected officers is to consider an appointment to fill a vacancy. I have checked this interpretation with Carlyn Reed, Chief Staff Attorney for the League and she concurs. However, Mrs. Reed has promised to check with William Keiser, Legislative Counsel of the League and other staff attorneys at the League office and will communicate with me if our interpretation does not represent a consensus.

3. Section 54957.1 is added to require that the city council shall "publicly report at a subsequent public meeting any action taken, and the roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any executive session of the legislative body."

It has always been valid to take action, including taking a vote, in executive session and it has not been necessary to report the action taken (including the vote) at a public meeting. However, this will change on January 1, 1976, when the action taken (including the vote) in executive session must be publicly reported at a subsequent public meeting, in connection with the appointment, employment or dismissal of a public employee. With respect to all other matters, no public report must be made. This emphasizes the reason why, as the City Attorney has frequently advised for years, executive minutes should be made of actions taken (including roll call votes) in executive sessions.

4. Section 54960.5 is added to permit a court to award court costs and reasonable attorney fees to the plaintiff in an action to enforce the Brown Act and that such costs and fees shall be paid by the city and not become a personal liability of any public officer or employee. This section also provides that the court may award court costs and reasonable attorney fees to a defendant in any such action where the defendant has prevailed and the court finds that the action was "clearly frivolous and totally lacking in merit."

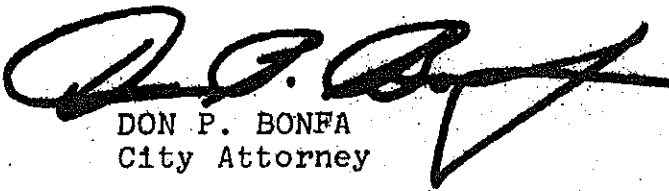
There is no easy shortcut to understanding the Ralph M. Brown Act. It is very vague and ambiguous in some of its sections.

Members of the City Council
and City Administrator
Ralph M. Brown Act

15 December 1975
Page 3

I commend this transmittal to your serious study. Should you have questions, I shall be pleased to assist you.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'D.P. Bonfa', is written over the typed name.

DON P. BONFA
City Attorney

DPB:ahb

Attachment

1 examination of facts and data outside the territory of the
2 local agency shall be held within the territory of the local
3 agency and shall be open and public, and notice thereof
4 must be delivered personally or by mail at least 24 hours
5 before the time of such meeting to each person who has
6 requested, in writing, notice of such meeting.

7 If the advisory commission, committee or body elects
8 to provide for the holding of regular meetings, it shall
9 provide by bylaws, or by whatever other rule is utilized
10 by that advisory body for the conduct of its business, for
11 the time and place for holding such regular meetings. No
12 other notice of regular meetings is required.

13 "Legislative body" as defined in this section does not
14 include a committee composed solely of members of the
15 governing body of a local agency which are less than a
16 quorum of such governing body.

17 The provisions of Sections 54954, 54955, 54955.1, and
18 54956 shall not apply to meetings under this section.

19 ~~SEC. 9. SEC. 8.~~ Section 54957 of the Government
20 Code is amended to read:

21 54957. Nothing contained in this chapter shall be
22 construed to prevent the legislative body of a local
23 agency from holding executive sessions with the Attorney
24 General, district attorney, sheriff, or chief of police, or
25 their respective deputies, on matters posing a threat to
26 the security of public buildings or a threat to the public's
27 right of access to public services or public facilities, or
28 from holding executive sessions during a regular or
29 special meeting to consider the appointment,
30 employment or dismissal of a public employee or to hear
31 complaints or charges brought against such employee by
32 another person or employee unless such employee
33 requests a public hearing. The legislative body also may
34 exclude from any such public or private meeting, during
35 the examination of a witness, any or all other witnesses in
36 the matter being investigated by the legislative body.

37 For the purposes of this section, the term "employee"
38 shall not include any person appointed to an office by the
39 legislative body of a local agency; provided, however,
40 that nonelective positions of city manager, county

1 administrator, city or
2 department head or other
3 of a local agency shall be
4 and provided, further
5 general manager, chief
6 secretary, auditor, assess
7 any governmental distr
8 limited boundaries shall l

9 Nothing in this chapter
10 any board, commission
11 organized and operated
12 defined in Section 54952

13 to consider (a) matters al
14 (b) the appointment, e
15 employee or to hear c
16 against such employee t
17 unless such employee r
18 body also may exclude f
19 meeting, during the exam
20 other witnesses in the m
21 legislative body.

22 ~~SEC. 11 SEC. 9.~~ Se
23 Government Code, to re
24 54957.1. The legislati
25 publicly report at a subse
26 taken, and the rollcall v
27 or dismiss a public empl
28 session of the legislative

29 ~~SEC. 12 SEC. 10.~~ S
30 Government Code, to r
31 54960.5. A court n
32 reasonable attorney fee
33 brought pursuant to Sec
34 the local agency has viol
35 Such costs and fees shall
36 shall not become a pers
37 or employee thereof.

38 A court may award co
39 fees to a defendant in
40 Section 54960 where th

1 final determination of such action and
2 the action was clearly frivolous and
3 merit.

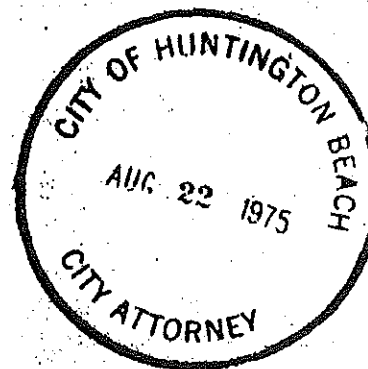
4 ~~SEC. 13~~ SEC. 11. No appropriati
5 act, nor is any obligation created ther
6 2231 of the Revenue and Taxatio
7 reimbursement of any local agency for
8 be incurred by it in carrying on
9 performing any service required to
10 performed by it by this act.

O

California Cities
Work Together

League of California Cities

Sacramento, California
August 1975



TO: Mayors, Council Members, City Managers, City Clerks and City Attorneys

SUBJECT: Ralph M. Brown Act* -- Open Public Meetings

A year ago the League sent all mayors, managers, clerks and attorneys a copy of an analysis of the Ralph M. Brown Act prepared by Frank Gillio, City Attorney of Los Altos Hills and Millbrae. Because of the importance of the Act to all members of local legislative bodies, we have added all council members to this mailing. Frequent attempts to further amend the Brown Act making it impractical and unworkable also suggest that in addition to the Gillio analysis and a copy of the Act itself, it would be desirable to review its history, as well as its current provisions, so that individual members of local legislative bodies will be fully aware of open meeting requirements and also be in a better position to discuss proposed amendments with their legislators. A detailed legislative history of all Senate and Assembly bills affecting the Brown Act from 1953 to 1975 has been included only in the city attorneys mailing.

The Brown Act was the forerunner of legislation designed to open up all levels of government to the public. Co-sponsored by the League of California Cities and the California Newspaper Publishers Association it was adopted in 1953 to give new vigor to century-old public meeting laws that were all too frequently ignored. It also extended the open meeting requirements to a wide variety of local public agencies, boards and commissions not then covered by an open meeting law. The very earliest statutes in California's first legislative session in 1850 provided with respect to cities generally "A city shall, by ordinance, fix the times and places of holding their stated meetings, . . . , and their proceedings shall be public." (Section 10, Chapter 14, Statutes 1850.) Between 1850 and 1879 a similar provision was included in each special act creating a city and in 1883 with the adoption of the Municipal Corporations Act under which general law cities were formed, Section 858 (Government Code Section 36808) provided "All meetings shall be public." (Chapter 49, Statutes 1883.) Every charter adopted pursuant to Article XI of the Constitution has included a provision requiring council meetings to be public. The Brown Act threw the spotlight of compliance on open meeting laws and unlawful secret meetings today are both rare and hazardous.

In extending the open meeting law to all local jurisdictions, boards and commissions and focusing the public's attention on open meeting laws, the Brown Act declared "It

*Government Code Sections 54950-54961 (attached).

is the intent of the law that their (legislative bodies) actions be taken openly and that their deliberations be conducted openly." As enacted in 1953, the Brown act required all meetings of a legislative body of a local agency to be open and public and granted all persons the right to attend such meetings. "Legislative body" was broadly defined to include not only all local governing bodies but also local boards and commissions. "Local agency" also was broadly defined to include every type of local public body. Each legislative body of a local agency was required by ordinance or resolution to provide for the conduct of its meetings including the time and place thereof. Provision was made for the holding of special meetings provided 24 hours notice of the meeting was given to all news media requesting written notice. Notice of the special meeting had to contain the time and place of the meeting as well as the business to be transacted. No other business could be considered. Executive sessions were limited to the consideration of the appointment, employment or dismissal of public officers or employees or to hear complaints or charges brought against such officers or employees. While the Brown Act as enacted in 1953 did not include a penalty or a method of enforcement, the first appellate decision to interpret the law held that two existing provisions of other statutes prescribed a misdemeanor penalty. (Government Code Section 1222; Penal Code Section 177.)

The first major revision of the Brown Act occurred in 1961 when Governor (Pat) Brown vetoed one bill which, among other things, would have made any action taken in violation of the Brown Act void but approved a substantially similar bill which excluded the objectionable section. The 1961 legislation added a short title, definition of legislative body and, more importantly, a definition of "action taken" as well as two methods of enforcing the open meeting law. It made each member of the legislative body attending a meeting in violation of the Act with knowledge of the fact that the meeting was in violation thereof guilty of a misdemeanor. It also authorized any interested person to bring an action to prevent the holding or threatened holding of closed meetings. The law also has been amended from time to time to make it expressly applicable to charter cities, to include advisory bodies and to require mailed notice of meetings to property owners by public districts. As Mr. Gilio's paper clearly indicates, the courts, and particularly the Attorney General, have had many occasions to interpret the Act.* They both agree that it applies to all meetings of a majority of the members of the legislative body where public business is discussed. The Act does not apply to social gatherings and the difference between a social gathering and a meeting arranged for pursuit of the public's business will usually be quite apparent as Justice Friedman noted in Sacramento Newspaper Guild v. Sacramento County, 263 C.A. 2d 41. Thus, while the criminal penalty applies only to unlawful meetings where action is taken, the courts may enjoin any meeting or threatened meeting where the public business of the particular local agency is discussed or deliberated.

Attempts have been made almost every year to extend the Brown Act to committees of less than a quorum notwithstanding the fact that such committees or individuals cannot take action. The courts and the Attorney General have stated:

"In general terms, the concept is that the Act does not apply to meetings

*Secret Meeting Laws Applicable to Public Agencies - Evelle J. Younger, Attorney General, Jan. 1972; Room 800, State Building, 350 McAllister, San Francisco 94102

of committees of less than a quorum of the legislative body of the local agency. This is because the findings of such a committee have not been deliberated upon by a quorum of the legislative body, and consequently the opportunity for a full public hearing and consideration of the committees' findings and recommendations by a quorum still remains. Hence the public's rights under the Act are still protected."

The Legislature also has rejected attempts to limit the court-approved executive session which permits the city attorney to meet with the city council to discuss pending or anticipated litigation in order to prevent the city's adversary from gaining an unfair advantage to the detriment of the public generally.

One word of caution. As we said last year, there are very few exceptions to the open meeting requirements of the Brown Act and Mr. Gillio discusses them in some detail and points out that the so-called "personnel" session exception is a narrow one. Executive sessions may not be held to consider so-called "personnel" matters. The Brown Act only permits an executive session to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee. It also permits a legislative body to meet in executive session with its designated representative prior to and during labor negotiations to discuss salaries, salary schedules and fringe benefits when necessary to review the city's position and instruct such representative. These are very specific exceptions. In giving notice to news media of a proposed executive session, the notice should be in the language of the statute and not simply that a so-called "personnel" matter is to be discussed.

The Brown Act has been a model for the rest of the country. It was one of the first giving renewed strength to public meeting laws and it has served as a good example for state agencies and the Legislature itself. Properly adhered to and enforced, there probably is no better open meeting law in the country. It has been a major factor in maintaining good government in California. Amendments other than for purposes of clarification or to take care of changing conditions in the administration of the public's business, e.g., labor negotiations, are unnecessary and should be avoided. With full knowledge of the Act and its history, you will be in the best possible position to preserve a workable open meeting law for the purposes intended by its sponsors and by Ralph M. Brown.

William H. Keiser
Legislative Counsel

Don Benninghoven
Executive Director

BROWN ACT - Council Meetings
(Government Code)

54950. In enacting this chapter, the legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

54950.5. This chapter shall be known as the Ralph M. Brown Act.

54951. As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

54951.1. For the purposes of this chapter, and to the extent not inconsistent with federal law, the term "local agency" shall include all private nonprofit organizations that receive public money to be expended for public purposes pursuant to the "Economic Opportunity Act of 1964".

54951.7. "Local agency" includes any nonprofit corporation, created by one or more public agencies, whose board of directors is appointed by such public agencies and which is formed to acquire, construct, reconstruct, maintain or operate any public work project.

54952. As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation.

54952.3. As used in this chapter, "legislative body" also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a governing body of a local agency.

Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.

If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings is required.

"Legislative body" as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body.

The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section.

54952.5. As used in this chapter, "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency.

54952.6. As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or assembly, upon a motion, proposal, resolution, order or ordinance.

54953. 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.

54953.3. A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance.

54954. The legislative body of a local agency shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time for holding regular meetings. Unless otherwise provided for in the act under which the local agency was formed, meetings of the legislative body need not be held within the boundaries of the territory over which the local agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake or other emergency, it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the presiding officer of the legislative body.

54955. The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, by law, or other rule.

54955.1. Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the

same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

54956. A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or by mail at least 24 hours before the time of such meetings as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the legislative body. Such written notice may be dispensed with as to any member who at or prior to the time and meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee unless such officer or employee requests a public hearing. The legislative body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding executive sessions to consider (a) matters affecting the national security, or (b) the appointment, employment or dismissal of an officer or employee or to hear complaints or charges brought against such officer or employee by another officer, person, or employee unless such officer or employee requests a public hearing. Said body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

54957.6. Notwithstanding any other provision of law, a legislative body of a local agency may hold executive sessions with its designated representatives prior to and during consultations and discussions with representatives of employee organizations regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of employees in order to review its position and instruct its designated representatives.

54957.9. In the event that any meeting is wilfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are wilfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for wilfully disturbing the orderly conduct of the meeting.

54958. The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

54959. Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

54960. Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body.

54961. No local agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. This section shall apply to every local agency as defined in Section 54951.

Open Public Meetings

Requirements of the Ralph M. Brown Act and Exceptions Thereto

by

**Frank Gillio
City Attorney of
Los Altos Hills and Millbrae**

The Brown Act, described as the strictest open meeting law in the United States, requires that meetings of each of the following be open and public without any restriction on the right of the public to attend:

1. The City Council,
2. City Boards or Commissions,
3. Advisory Committees, or
4. Any other body on which city officers serve in their official capacity and which is supported partially or totally by city funds.
5. Any private nonprofit organization receiving public money pursuant to the Economic Opportunity Act of 1964.
6. Any nonprofit corporation created by one or more public agencies who also appoint the board of directors and whose purpose relates to acquisition, construction, reconstruction, maintenance or operation of any public work project.

The requirement that meetings be open to the public does not apply to meetings of committees of a City Council consisting of less than a quorum of its members.

Executive or personnel sessions from which members of the public and press are barred may be held during a regular or special meeting for the following purposes:

1. To consider the employment or dismissal of a public officer or employee, or to hear charges brought against such person, unless the officer or employee in question requests a public hearing;
2. To discuss with the City Attorney litigation pending, proposed, or anticipated, where a public discussion would benefit the City's adversary and be detrimental to the public.
3. To meet with the Attorney General, District Attorney, Sheriff or Chief of Police (or their deputies) on matters "posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities."
4. To instruct city representatives concerning salaries, salary schedules, or compensation paid in the form of fringe benefits prior to or during negotiations with employee organizations.

5 To negotiate and discuss with employee organization representatives following the intervention of a State labor conciliator in a labor dispute.

6 To consider matters affecting the national security, in the case of a body operated by a private corporation or which city officers serve in their official capacity and which is supported partially or totally by city funds.

In addition, if any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any such session. The body may establish a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

Each body subject to the Brown Act is forbidden from conducting any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religion, creed, color, national origin, ancestry, or sex.

Attendance at a meeting in violation of the Brown Act where action is taken and with knowledge of the fact that the meeting is in violation of the Act, carries criminal penalties.

The term "action is taken" means:

1. A collective decision made by a majority of the members, or
2. A collective commitment or promise by a majority of the members to make a positive or a negative decision, or
3. An actual vote by a majority of the members when sitting as a body on a motion, proposal, resolution, order, or confirmation.

The stated purpose of the Brown Act is to insure that public commissions, boards and councils, and other public agencies in the State of California conduct their deliberations and take their actions openly.

ANALYSIS:

Unless otherwise indicated, all references are to the Government Code of California.

OPEN MEETING REQUIREMENT

The Brown Act (Secs. 54950 to 54981, incl.) requires that all meetings of the "legislative body" of a city, among others, be open and public and all persons be permitted to attend, with exceptions discussed later (Sec. 54953).

The right of the public to notice of and to attend meetings without restrictions has been jealously guarded.

A San Diego City Council rule was declared invalid which required citizens who desired to attend "Council conferences" to register with the City Clerk and identify the groups they represented, the agenda item in which they were interested, and whether they were trying to influence the passage or defeat of such legislation. Persons attending such "Council conferences" were required to agree to remain silent unless requested to speak (27 Ops. Cal. Atty. Gen. 123 - 1956). The State Legislature in 1957 amended the Act to conform to this opinion and to provide that a member of the public cannot be required as a condition to attending a meeting to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition which is a condition precedent to his attending the meeting (Sec. 54953.3).

All that is required under the Brown Act is that meetings be open and public and all persons permitted to attend. It does not explicitly or impliedly infer a right to broadcast meetings. It is within the discretion of a County Board of Supervisors to refuse to permit a radio station to broadcast its regular meetings (38 Ops. Cal. Atty. Gen. 52 - 1961).

A Council rule prohibiting the use of tape recorders or mechanical devices in the Council Chambers to obtain tapes or recordings of council proceedings was held to be invalid (Nevens v. City of Chino - 1965 - 233 CA 2d 775), the court noting that the device could be operated without noise or interference with council proceedings, and that the rule bars "what clearly should be permitted in making an accurate record of what takes place at such meetings."

The open meeting requirement extends beyond meetings of the city council. Since the Act was adopted in 1953, the definition of a "legislative body" has been expanded to include, in addition to the City Council, the following:

1. A planning commission, library board, recreation commission and other permanent city boards or commissions (Sec. 54952.5).
2. Any advisory commission, advisory committee or advisory board, whether created by charter, ordinance, resolution, or any similar formal action of the city council (Sec. 54952.3).

3. Any board, commission, committee, or other body on which city officers serve in their official capacity as members and which is supported in whole or in part by city funds, whether the particular body is organized and operated by the city or by a private corporation (Sec. 54952).

4. Any private nonprofit organization receiving public money pursuant to the Economic Opportunity Act of 1964 (Sec. 54951.1).

5. Any nonprofit corporation created by one or more public agencies who also appoint the board of directors and whose purpose relates to acquisition, construction, reconstruction, maintenance or operation of any public work project (Sec. 54951.7).

However, meetings of a committee composed solely of members of the governing body (City Council) which are less than a quorum of such governing body are excluded from the open meeting requirement (Adler v. Culver City - 1980 - 184 CA 2d 763, 771; 32 Ops. Cal. Atty. Gen. 240 - 1958 - See also Sec. 54952.3).

Special provisions simplifying the operation of advisory committees should be noted. The procedural provisions of the Act (fixing time of meetings, notice of adjourned or special meetings, or continuance of hearings) do not apply to advisory committees. If regular meetings are held, it is only necessary to provide in the by-laws or in the committee rules for their time and place. The Act does not apply to committee meetings held outside of the City if necessary in order to gather facts or other information. In the absence of regular meetings notice of a meeting when held is required to be delivered personally or by mail twenty-four hours in advance to each person who has requested, in writing, such notice. The Act does not apply to advisory committees which are created informally (Sec. 54952.3).

Under the Civic Center Act (Education Code Sec. 18556, et seq) an organization using a public school facility may not exclude the general public or use the school facilities for private or closed meetings or recreational activities. The general public may not be excluded from attending and observing the meetings or recreational activities (32 Ops. Cal. Atty. Gen. 220 - 1969).

PENALTY AND REMEDIES FOR VIOLATION

It is important to determine whether the Brown Act applies to a particular meeting because of the penalty provided. Each member of the Council or of a board, commission, or committee, who attends a meeting "where action is taken in violation of any provisions (of the Brown Act) with knowledge of the fact that the meeting is in violation thereof" is guilty of a misdemeanor (Sec. 54958). The term "action taken" is defined in Section 54952.6 to mean:

A collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

The criminal penalty added in 1961 is limited to a meeting at which "action" is taken (Sacramento Newspaper Guild v. Sacramento County Board of Supervisors - 1968 - 263 CA 2d 41, 48 holding that "the misdemeanor penalty of the Brown Act is focused on the meeting where action is taken, not on the meeting confined to deliberation").

However, any interested person may commence a civil action in the Superior Court (Mandamus, Injunction or Declaratory Relief) to stop or prevent either a violation or a threatened violation of the Brown Act, or to determine whether the Act applies to "actions or threatened future action" (Sec. 54960).

✓ The validity of the actions taken at a meeting claimed to have been held in violation of the Brown Act, nevertheless, have been held by the courts not to be affected.

Violations of the Brown Act even if true as charged would not invalidate a comprehensive zoning ordinance (Adler v. Culver City - 1960 - 184 CA 2d 763, 774-775; Claremont Taxpayers Association v. City of Claremont - 1963 - 223 CA 2d 589, 593-594).

Even if a Police Commission regulation requiring police officers (off duty or on duty in civilian dress) to be equipped with a revolver was passed secretly, the regulation would not be invalidated (Stribling v. Mailliard - 1970 - 6 CA 3d 470, 474).

Answering claims that a violation of the Brown Act occurred by reason of telephone contact among the members of a Redevelopment Agency and holding of one or more meetings concerning qualifications of proposed redevelopers prior to a joint public study session of the Council and Agency, the Court (Old Town Development Corporation v. The Urban Renewal Agency of the City of Monterey - 1967 - 249 CA 2d 313, 329) after noting that there was no allegation that the "action taken" in adopting each resolution determining which was the qualified proposal and setting a hearing on land disposition was not at a public meeting, held:

"Insofar as the allegations suggest that there was 'a collective commitment or promise by a majority of the members of (the Agency) to make a positive or negative decision' on the matters in question, in violation of the Brown Act, it would not invalidate the action subsequently taken. . . . (The) contentions regarding purported violations of the Brown Act . . . are unavailing, because, even if true, the ordinance would not be invalidated."

WHAT IS A MEETING?

As frequently pointed out, one of the problems connected with application of this Act is its failure to define the word "meeting" (38 Ops. Cal. Atty. Gen. 175 - 1960). Both Attorney General and the Courts have discussed what constitutes a "meeting".

Construed in the light of the Brown Act's objectives, the term "meeting" extends to informal sessions or conferences designed for the discussion of public business. By the specific inclusion of committees and their meetings, the Brown Act demonstrates its general application to collective investigatory and consideration activity stopping short of official action (Sacramento Newspaper Guild v. Sacramento County Board of Supervisors 1968 - 263 CA 2d 41, 49, 51 involving a luncheon meeting attended by the entire Board).

of Supervisors, other county officers, and members of the Central Labor Council AFL-CIO, at which the social workers union strike against Sacramento County was discussed, and to which newspaper reporters were denied admission. The Court held the luncheon to be a meeting within the meaning of the Act.)

The Brown Act does govern regularly held luncheon meetings by members of one or more City Councils with representatives of certain civic associations to discuss items of area importance (school and airport facilities, water supply, sewage disposal and beach erosion), and at which a City Council regularly schedules attendance as a group (43 Ops. Cal. Atty. Gen. 38 - 1964). The public is entitled to notice of and the right to attend such meetings because even though no decisions or agreements to make decisions were made at such informal luncheon sessions, the nature of such meetings and perhaps their true purpose and design was to provide a forum for the free exchange of information and ideas on items of area importance with a view toward obtaining a general consensus which in turn would provide the bases for fruitful "action" by the legislative bodies. However, mere social attendance by a majority of a Council at luncheons or dinners given by civic or fraternal organizations, such as the Rotary, Kiwanis, Lions, Optimists, Elks or Moose, does not constitute a meeting of the City Council subject to the Act.

The Brown Act does not apply to special committees or subcommittees consisting of less than a quorum of the members of the legislative body (e.g., City Council) which created them, because the necessity and opportunity for full public deliberation by the legislative body still remains. The Act does apply to a committee composed of a majority or more of the members of the legislative body (32 Ops. Cal. Atty. Gen. 240 - 1958).

The requirements of the Brown Act cannot be avoided by the use of the device commonly known as a "committee of the whole" (27 Ops. Cal. Atty. Gen. 123 - 1956).

In 1963 the Attorney General (42 Ops. Cal. Atty. Gen. 81) held that there is no statutory authority for excepting "informal sessions" from the application of the Brown Act. In holding that the public was entitled to notice of and to attend briefing sessions held in the City of Lodi, 30 minutes prior to scheduled public meetings in the City Manager's conference chambers, the Attorney General noted that the requirement that meetings be open and public had been interpreted as including discussion sessions within the term "meetings". The right to notice and to attend a meeting is not dependent on whether "action" is taken or whether the members of the governing body do or do not intend to take action. The term "all meetings" previously was interpreted as encompassing more than just meetings at which formal action was taken. The references in the Brown Act concerning "action taken" relate only to the imposition of criminal penalties on the members of legislative bodies. These provisions are separate and distinct from those provisions giving the people the right to notice of and attendance at all meetings of the legislative body.

A hearing officer appointed under a grievance procedure established by an agreement to hear charges preferred against a city employee who demanded that the hearing be opened to the public is not required to conduct a public hearing.

The single "hearing officer" who functions by himself is not a "legislative body" nor is the hearing a "meeting" within the meaning of the Brown Act. " . . . a hearing conducted by a single individual (is not required to) be opened to the public . . ." under the Act. Sections of the Act defining "legislative body" use words all of which import the involvement of more than one person, and conventional definitions of "meeting" refer to the presence of more than one person (Wilson v. San Francisco Municipal Railway - 1973 - 29 CA 3d 870, 876-881).

A meeting of a local admissions committee of the County Superintendent of Schools' office to review the application of an educationally handicapped child to attend special education classes is not subject to the Brown Act because the committee is not a legislative body of a local agency within the meaning of the Act by reason of being an advisory arm or adjunct to a single county officer (56 Ops. Cal. Atty. Gen. 14, 16 - 1973).

The earliest California appellate court decision interpreting what is a meeting under the Brown Act, as well as other of its provisions, was Adler v. City Council of the City of Culver City (1960) 184 CA 2d 763. Notwithstanding the Attorney General's misconception of the Adler decision and the 1961 amendments following that decision (42 Ops. Cal. Atty. Gen. 61 - 1963), Adler has been subsequently cited with approval and except where affected by subsequent legislative action, it remains as much the law of the state as any other decision of the District Court of Appeal. In Stribling v. Mailliard - 1970 - 8 CA 3d 470, 474-475, the court, after citing Adler, said: "(Some of the effects of the Adler case were removed by legislation, but the proposal to make void any action taken at nonpublic meetings was objected to by the Governor and was eliminated from the proposed amendment to the statute. See 42 Ops. Cal. Atty. Gen. 61, 66 - 1963.)"

EXCEPTIONS TO THE OPEN MEETING REQUIREMENT

There are several exceptions to the strict rule of the Brown Act that all meetings shall be open and public, and all persons be permitted to attend. These exceptions appear in the Brown Act itself or have been created by interpretation of both the appellate courts and the Attorney General.

An executive session may be held during a regular or special meeting

1. With the Attorney General, district attorney, sheriff or chief of police, or their deputies, "on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities; or
2. to consider the appointment, employment or dismissal of a public officer or employee, or to hear complaints or charges brought against an officer or employee, unless the officer or employee requests a public hearing (Sec. 54957).

A board, commission, committee, or other body organized and operated by a private corporation on which city officers serve in their official capacity as members and which is supported in whole or in part by city funds, may hold executive sessions concerning:

1. Matters affecting the national security, or

2. The appointment, employment or dismissal of an officer or employee or to hear complaints or charges brought against an officer or employee, unless the officer or employee requests a public hearing (Secs. 54952, 54957).

In either of the foregoing cases during the examination of a witness, any or all other witnesses in the matter being investigated may be excluded whether the meeting is being conducted as a public or private one.

✓ The City Council may hold an executive session with its City Attorney to discuss litigation pending, proposed, or anticipated. The authorities are cited under the topic "Litigation".

A City Council may hold executive sessions with its designated representatives prior to and during consultations and discussions with employee organization representatives concerning salaries, salary schedules or compensation paid in the form of fringe benefits in order to review the city's position and instruct its representatives (Sec. 54957.6).

A City Council may negotiate and discuss with representatives of employee organizations during an executive session held after the intervention of a state labor conciliator as authorized by law without violating the Brown Act, because the records of the Department of Industrial Relations are confidential. If the confidentiality required by law is to be maintained, the deliberations which the records memorialize must also be privileged and confidential. The purpose of the statute (Labor Code Sec. 85) is to prevent the disclosure of what transpires during conciliation proceedings. (51 Ops. Cal. Atty. Gen. 201 - 1968). The labor negotiations exception appearing in the Brown Act (Sec. 54957.6) refers to a city council holding executive sessions with its representatives. The most recent exception found by the Attorney General refers to an executive session with representatives of the employees.

EXECUTIVE SESSIONS

The right to hold an executive session to consider "personnel" matters is described as a narrow exception and certain rules have been laid down.

An executive session may be held only during a regular or special meeting for which adequate notice has been given as required by the Brown Act (43 Ops. Cal. Atty. Gen. 79 - 1964).

✓ The appointment of a Councilman to fill an existing vacancy during an executive session following which no public vote is taken by the Council in connection with the appointment is proper because executive sessions may be held to consider the appointment of a public officer, among other things. The word "consider" includes the right to act in the matter of appointment of an officer (Lucas v. Board of Trustees of Armijo Joint Union High School District - 1971 - 18 CA 3d 988, 991; 40 Ops. Cal. Atty. Gen. 4 - 1962).

The right to hold an executive session for the appointment of a public officer extends to the choosing by a public body of its own officers and is not restricted to the appointment of some person to a separate position or group (Edgar v. Oakland Museum Advisory Commission - 1973 - 38 CA 3d 73, 76).

Neither members of the press nor any other individuals who are not witnesses in the matter being investigated may be admitted to an executive session because the Brown Act "does not permit exceptions to be made for one or more members of the press or any other member of the public". There is no authorization for a "semi-executive" session to which only particular members of the public, selected or approved by the public body are permitted to attend. The entire purpose for authorizing executive sessions, namely, secrecy, confidentiality, and absence of publicity, would be rendered nugatory by permitting individuals other than members of the public body involved to attend executive session (46 Ops. Cal. Atty. Gen. 34 - 1965).

The Brown Act permits a closed session to consider the dismissal of an officer or employee unless such officer or employee requests a public hearing. In a dismissal matter the Council's action was sufficient even though not done in an open public meeting (Corzolino v. City of Fontana - 1955 - 136 CA 2d 608, 612).

The Brown Act does not require publication of a detailed agenda specifying termination of an employee's contract as a matter to be considered at an executive session (Lucas v. Board of Trustees of Armijo Joint Union High School District - 1971 - 18 CA 3d 988, 992; Krausen v. Solano County Junior College District - 1974 - 42 CA 3d 394, 404).

The general rule is that an employee may request a public hearing rather than an executive session. The employee has no right to require a closed meeting. Unless the employee has asked for a public meeting the discretion lies with the governing body as to whether the hearing shall be public or private. (44 Ops. Cal. Atty. Gen. 147 - 1964).

Minutes of executive sessions concerning discussions or action on personnel matters are not available for public inspection. They may be made public by the determination of a majority of the governing body to make all or any portion of the minutes of an executive session public as they deem appropriate regardless of the concurrence of the parties involved. To require that the minutes of an executive session must be open to public inspection would destroy the very purpose of the exception contained in the Brown Act (44 Ops. Cal. Atty. Gen. 147 - 1964).

When a school district employee requested a public hearing in a personnel matter and the governing board held an executive session prior to the second public hearing in order to review the answers given during the first public hearing, the employee claimed that since he had requested a public hearing it was improper to consider any phase of the matter in an executive session. The court held that if there was a technical violation of the Brown Act, it in no way prejudiced the employee's rights and did not invalidate the Board's action because the Board did not take any action or hear any additional evidence (Huntington Beach Union High School Dist. v. Collins - 1982 - 202 CA 2d 677, 682).

A discussion during an executive session of the qualifications of two persons to continue as radiologists which was followed by an open meeting during which one agreement relating to radiology services was terminated and another approved, was held not to violate the Brown Act because the discussion during an executive session of the personal qualifications of the two men in question came within the "closed session exception" provided in the Brown Act (Letsch v. Northern San Diego County Hospital Dist. - 1986 - 248 CA 2d 873, 877-878).

LITIGATION

Meetings of a City Council with its City Attorney for the purpose of general discussion and consideration of problems confronting the Council, including legal problems, are subject to the Brown Act. The holding of an executive session with the City Attorney to consider litigation pending or threatened originally was approved by the Attorney General.

The public interest with which the Brown Act is concerned does not require conferences between a City Council and its City Attorney held solely to discuss litigation (including condemnation of property) pending, proposed or anticipated, to be open to the public where a public discussion of such matters would redound to the benefit of the city's adversary and to the detriment of the public (36 Ops. Cal. Atty. Gen. 175 - 1960). The Attorney General was quick to point out that "... in the normal relation between a City Council and its City Attorney where the City Council seeks the legal advice of the City Attorney as to the legal effect of matters pending before the City Council, such meetings must be open to the public."

This opinion was reinforced in 1963 when the Attorney General (42 Ops. Cal. Atty. Gen. 81) stated that meetings of a City Council with the City Manager, City Attorney, and Planning Director are subject to the open meeting requirements of the Brown Act unless the subjects under discussion involve matters within the executive session exception (Sec. 54957), or are the subject of then current or pending litigation within the narrow limits carefully outlined in the 1960 opinion.

The first judicial sanction of this exception came in a case in which the District Court of Appeal permitted a Board of Supervisors to confer with its attorney under conditions in which the lawyer-client privilege would obtain (Sacramento Newspaper Guild v. Sacramento County Board of Supervisors - 1967 - 255 CA 2d 51).

However, the definitive approval of a public body's right to meet with its attorney in an executive session under the appropriate circumstances came one year later in Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968) 283 CA 2d 41, 52-55. A privilege attaches to confidential lawyer-client communications which is just as available to public agency clients and their lawyers as to their private counterparts. The Evidence Code distinctly includes public agencies among the clients who may assert this privilege. The privilege serves a policy assuring private consultation. If client and counsel must confer in public view and hearing, both privilege and policy are stripped of value. After noting that the statutory lawyer-client privilege of public agencies actually predates the Brown Act, the Court concluded that the public meeting requirement in the Brown Act did not abrogate by implication the statutory policy assuring opportunity for private legal consultation by public agency clients. Government

should have no advantage in legal strife; neither should it be a second-class citizen.

PROCEDURAL RULES CONCERNING MEETINGS

A meeting is not required to be held within the boundaries of the territory over which a particular public body exercises jurisdiction unless the law under which the City or other local public agency was formed provides otherwise (Sec. 54954).

Meetings of city councils in general law cities must be held within the corporate limits of the city (Sec. 36808). On May 1, 1975, the Superior Court of San Luis Obispo County held that the law under which general law cities were formed provides that city councils of such cities must meet within the boundaries thereof. The court also noted that other advisory boards, commissions and committees must meet within the city limits except for meetings which require an examination of facts and data outside the territory of the local agency. (Five Cities Times Press Recorder, et al v. City of Arroyo Grande - 1975 - San Luis Obispo County Superior Court No. 45437).

The Merced City Charter requires that all City Council meetings be held in the Council Chambers in the City Hall (Merced Charter Sec. 409). Notwithstanding that notice was given of Council dinner meetings held in local restaurants and which were attended by the press, such meetings at which there was a discussion or deliberation concerning public business, were held to be a violation of the Brown Act. While the Charter requirement concerning the place of holding meetings was controlling, it should be noted that such gatherings were held to be "meetings" within the decision of the Sacramento Newspaper Guild case discussed previously. Meetings of Councilmen with other municipal, county or statewide legislative bodies or officials for the discussion of matters of common interest, wherever held, were excepted (Linton v. City Council - 1968 - Merced County Superior Court No. 37039).

A number of procedural rules also are laid down in the Brown Act. It requires that the time and place of regular meetings be set by ordinance, resolution, or by-laws. A regular meeting falling on a holiday is to be held on the next business day. In case of an emergency, the presiding officer may designate another meeting place (Sec. 54954). Any type of meeting may be adjourned to a time and place specified, or by the clerk or secretary in the absence of all members, in which case written notice must be given in the same manner as provided for special meetings. A copy of the order or notice of adjournment is required to be posted at the place where the meeting was held within 24 hours thereafter. If the order fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings (Sec. 54955). A hearing may be continued in the same manner as a meeting may be adjourned, but if it is continued less than 24 hours after the time specified in the order or notice of hearing, a copy of the continuance order or notice must be posted immediately following the meeting (Sec. 54955.1).

Notice of a special meeting, which may be called by the presiding officer or a majority of the members, is required to be delivered personally or by mail to each member and to each local newspaper, radio, or television station which has requested notice in writing, at least 24 hours prior to the time of the special meeting. The

business to be transacted must be specified in addition to the time and place, and no other business may be considered. Written notice may be dispensed with as to any member who files a written waiver of notice at or prior to the time of the special meeting. Any waiver may be given by telegram. Written notice may be dispensed with as to any member who is actually present when the meeting convenes (Sec. 54856).

The required notice to news media of special meetings must be actually delivered at least 24 hours before the time of such meeting to those media who have requested notice in writing. Deposit of such a notice in the mail is not sufficient (53 Ops. Cal. Atty. Gen. 248 - 1970).

Any property owner within a District (but not a city) may request in writing mailed notice of every regular or special meeting (Sec. 54854.1). The detailed requirements to be complied with by the District are set forth in the statute.

The right to notice of special meetings has been strongly upheld. As early as 1858 the State Supreme Court (County of Eldorado v. Reed - 11 C 130) held that the business of the Supervisors is required to be transacted at the regular meetings provided by law, and the public is entitled to notice of the business proposed to be transacted at special meetings.

The press may require twenty-four hours advance notification of any special meeting of the whole public agency, but such notice is not required as to any regular or adjourned regular meeting. The minutes of a regular or special meeting of the legislative body of a local public agency are public records open to inspection (32 Ops. Cal. Atty. Gen. 240 - 1958).

MISCELLANEOUS PROVISIONS

In 1970 the State Legislature added several provisions to the Brown Act.

Every local agency within the purview of the Brown Act is forbidden from conducting any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex (Section 54961).

"In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session.

Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting" (Section 54957.9.).



CITY OF HUNTINGTON BEACH
INTER-DEPARTMENT COMMUNICATION

FLOYD G. BELSITO
To Acting City Administrator

From City Attorney

Subject City Reimbursement for
Expenses of Councilperson's
Spouse

Date June 29, 1976

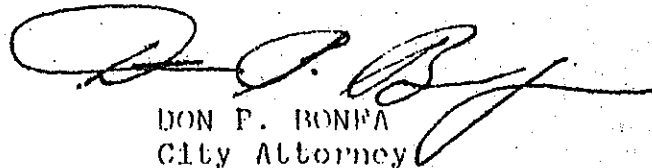
You have asked for the City Attorney's opinion respecting the legality of reimbursing the expenses of the spouse of Council member when attending a function whose cost when incurred by the Council member is reimbursed by the City.

With respect to the Council member, reimbursement is authorized under Section 502 of the City Charter on order of the City Council for council-authorized traveling and other expenses when on official duty upon submission of itemized expense account therefor. Therefore, if a Council member attends a dinner meeting or other function "on official duty" as a member of the City Council, such expense is reimbursable upon submission of itemized expense account therefor. These expenses should be submitted in summary form to the City Council for approval once each month as required by proposed amended Section 2.28.010 of the Huntington Beach Municipal Code.

There is no provision in the City Charter for reimbursement of expenses of the Council member's spouse even when said spouse accompanies the Council member who is on "official duty" as such.

We find no clear authority for reimbursement of expenses of Council member's spouse and although it is not entirely free from doubt, it is our conservative opinion that such reimbursements would not be valid inasmuch as they probably constitute a "gift of public funds".

Respectfully submitted,


DON P. BONIFA
City Attorney

DPB:er

PRESIDENT
EUGENE N. COLLINS
City Attorney
Chattanooga, Tennessee

1st VICE PRESIDENT
CONARD B. MATTOX, JR.
City Attorney
Richmond, Virginia

2nd VICE PRESIDENT
HERBERT P. GLEASON
Corporation Counsel
Boston, Massachusetts

3rd VICE PRESIDENT
THOMAS EMMET WALSH
City Attorney
Spartanburg, South Carolina

TREASURER
HENRY W. UNDERHILL, JR.
City Attorney
Charlotte, North Carolina

GENERAL COUNSEL
CHARLES S. RHYNE
Washington, D.C.

TRUSTEES:

N. ALEX BICKLEY
City Attorney
Dallas, Texas

SAMUEL GORLICK
City Attorney
Burbank, California

AARON A. WILSON
City Counselor
Kansas City, Missouri

JOHN DEKKER
City Attorney
Wichita, Kansas

BURT PINES
City Attorney
Los Angeles, California

JAMES B. BRENNAN
City Attorney
Milwaukee, Wisconsin

WALDO F. BALES
City Attorney
Tulsa, Oklahoma

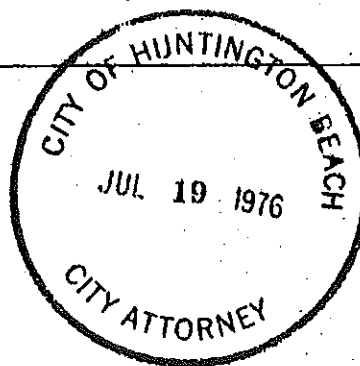
W. BERNARD RICHLAND
Corporation Counsel
New York, New York

WILLIAM R. QUINLAN
Corporation Counsel
Chicago, Illinois

S.G. JOHNDROE, JR.
City Attorney
Fort Worth, Texas

J. LAMAR SHELLEY
City Attorney
Mesa, Arizona

BENJAMIN L. BROWN
City Solicitor
Baltimore, Maryland



July 9, 1976

Don P. Bonfa
City Attorney
P.O. Box 190
Huntington Beach, Calif. 92648

Dear Don:

This is in response to your inquiry of July 1 as to whether a City may legally pay the expenses of a spouse of a city official who is being sent at city expense to a work-related conference.

Although we were unable to find any case law in point, the general principle governing public purpose expenditures seem to support your conclusion that such expenses could not be justified as necessary for "municipal affairs."

A Minnesota court has succinctly stated the generally accepted law concerning expenditures for public purposes.

"The state or its municipal subdivisions or agencies may expend public money only for a public purpose. A 'public purpose' is such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government. A legislative declaration of public purpose is not always controlling. In the final analysis, the courts must make the determination. The mere fact that some private interests may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public. On the other hand, if the primary object is to promote some private end, the expenditure is illegal, although it may incidentally also serve some public purpose." Port Authority v. Fisher, 269 Minn. 276, 132 N.W.2d 183, 192 (1964). See also Visina v. Freeman, 89 N.W.2d 635 (Minn. 1958); City of Pipestone v. Madsen, 178 N.W. 2d 594 (Minn. 1970).

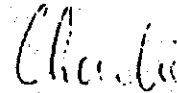
A California court concluded that "payment of the necessary expenses incurred by the duly delegated officers and employees of the city of Roseville in attending the annual conference of the League of California Cities, will constitute a lawful disbursement of municipal funds for a public purpose." City of Roseville v. Tulley, 131 P.2d 395, 400

July 9, 1976

(Cal. Ct. App. 1943). The public purpose served by attendance of city officials at this conference was that of improving the administration of municipal affairs. Certainly, this same public purpose would not be served by the attendance of city officials' spouses. Thus, accepting the orthodox view that some public purpose is necessary to justify expenditure of public funds, it is our conclusion that the expenses of the spouses of city officials cannot legally be paid by the City.

If we can be of any further assistance, please do not hesitate to call upon us.

Sincerely,



Charles S. Rhyne
General Counsel

CSR:PA:jj

OFFICE OF THE CITY ATTORNEY

OPINION NO. 76-40

29 July 1976

SUBJECT: City Council/Department Head
Retreat--Brown Act

REQUESTED BY: City Administrator

PREPARED BY: City Attorney

QUESTION: Would you please provide an opinion as to the legal ramifications and/or steps necessary for the Council/Department Head retreat to be held. Because of the fact that the retreat is scheduled to be held out of the city, could there possibly be a problem with the Brown Act?

ANSWER: A City Council/Department Head Retreat may be held out of the City but it is subject to the Brown Act.

DISCUSSION:

You have orally explained that the purpose of the retreat is "team building" and to study "the policy framework for the five-year budget." No action will be taken at the retreat.

Personnel Director Edward Thompson has told me the retreat is tentatively planned for two days and one or two nights at some as yet undetermined place in Orange County.

We assume the retreat has a "municipal purpose". The City Charter recognizes only formal meetings, i.e. regular meetings, including adjourned regular or re-adjourned regular meetings (Section 506 City Charter) and special meetings (Section 507 City Charter) of the City Council.

The City Charter provides that all "meetings" shall be held in the Council Chambers of the City or in such place within the City to which any such meeting may be adjourned, and shall be

open to the public. (Section 508 City Charter). The City Charter contains no definitions of the term "meeting". It is the opinion of the City Attorney that Section 508 refers only to the kinds of meetings specifically mentioned in the City Charter, namely; regular meetings (including adjourned regular or re-adjourned regular meetings) under Section 506 and special meetings under Section 507, and all informal meetings such as study sessions, conferences, retreats, etc. may be held at any place either within or outside the City as may be designated by the City Council provided they are open to the public if they are so required to be under the Ralph M. Brown Act.

The City Charter contains its own "Little Brown Act" in Section 510, which provides, in relevant part, that "all regular and special meetings of the City Council shall be open and public ..." (Emphases added), with exceptions to allow executive sessions as designated in said Section 510. Thus, in our opinion, Section 510 City Charter (Citizen Participation) applies only to formal ("regular" and "special") meetings of the City Council and does not apply to informal meetings.

Although the Ralph M. Brown Act, Section 54950 et seq. California Government Code, does not contain a definition of "meeting", the definition has been provided by court decisions and Attorney General's opinions. The following excerpt from the pamphlet issued by the office of the Attorney General entitled "Secret Meeting Laws Applicable to Public Agencies" (Revised, April 1976) at pages 12, 13 and 14, discusses "What is a meeting?"

"What is a Meeting?"

"The question of what constitutes a meeting within the Act sometimes may present a difficult question. Of course, no problem exists as to regularly scheduled and duly noticed regular and special meetings of a legislative body. The problem arises as to informal meetings of a majority of the members of a board. Such a meeting may have varying purposes and characteristics. It is significant to note that the Act itself does not define the term 'meeting'.

"In a published opinion of this office written in 1963 we expressed the view that so-called 'informal,' 'study,' 'discussion,' 'informational,' 'fact finding,' or 'pre-council' gathering of a majority of the members of a board probably fell within the scope of the Act as 'meetings' whether or not the individual members intended to or even took any action at such a gathering. 42 Ops. Cal. Atty. Gen. 61 (1963).

"In 1964 we held that regularly scheduled luncheon meetings by the members of one or more city councils with representatives of certain civic associations for the purpose of discussing items such as school and airport problems and other items of public importance fell within the Act. We pointed out, however, that our opinion was not to be construed to prohibit legislative bodies from mere social attendance at luncheons and dinners such as are often given by fraternal groups such as the Rotary Club or Kiwanis. 43 Ops. Cal. Atty. Gen. 36 (1964). See also I.L. 71-122 to the same general effect.

"The courts have specifically held that the Act now applies to informal meetings. In Sacramento Newspaper Guild v. Sacramento County Bd of Suprs., 263 Cal. App. 2d 41 (1968), the court held that a luncheon gathering which included five county supervisors, the county counsel, county executive, county director of welfare and certain union officers to discuss a strike which was underway against the county was a meeting within the Act, and therefore newspaper reporters were improperly excluded. The court's language at pages 50-51 of the decision is an excellent summary of the reasoning behind its decision. The court stated:

'In this area of regulation, as well as others, a statute may push beyond debatable limits in order to block evasive techniques. An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. The Elks Club luncheon, attended by the Sacramento County Board of Supervisors, was such a meeting.'

"Thus, meetings include informal gatherings where the public's business is discussed as well as formal meetings."

It appears that, and, in the opinion of the City Attorney, a City Council/Department Head Retreat falls within the broad purview of the term "meeting", as used in the Brown Act, but does not constitute a meeting under the City Charter. Thus, informal, as distinguished from formal meetings, are subject to the Brown Act but not to the City Charter.

Under the Brown Act, 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 the Act (Section 54953, California Government Code). However, the Brown Act does not require that meetings of the legislative body of a local agency be held within the boundaries of the territory over which the local agency exercises jurisdiction, unless otherwise provided for in the Act under which the local agency was formed. (Section 54954, California Government Code). The Brown Act further provides that the legislative body of a local agency shall provide, by ordinance, resolution, bylaws or by whatever other rule is required for the conduct of business by that body, the time for holding regular meetings. (Section 54954, California Government Code). The City Charter by Section 506 provides that "City Council shall hold regular meetings at least twice each month at such times as it shall fix by ordinance or resolution and may adjourn or re-adjourn any regular meeting to a date and hour certain which shall be specified in the order of adjournment and when so adjourned, each adjourned meeting shall be a regular meeting for all purposes...." The time and place of regular council meetings is fixed by Resolution No. 4161 (November 17, 1975) which provides that regular council meetings "shall be held in the City Council Chambers on the first and third Mondays of each month at 7:00 p.m. "except where a meeting falls on a holiday it shall be held on the next business day." A City Council/Department Head Retreat is not a regular or special meeting of the City Council under the City Charter and therefore need not be held within the City limits of Huntington Beach, however, it does fit the broad scope of the term "meeting" under the Ralph M. Brown Act and therefore, must be open to the public. The times, dates and place of the City Council/Department Head Retreat must be announced at a regular meeting of the City Council to enable the public and the press to attend the retreat.

The following requirements should be observed:

1. The retreat shall not constitute a regular or adjourned regular meeting or a special meeting of the City Council. It must not be a formal meeting.
2. There shall be no "action taken" as defined in Government

Code Section 54952.6, which reads: "...collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance." If "action" were to be taken, the meeting would in fact be "formal" and subject to the City Charter.

"Deliberation" at the retreat is inevitable and is permitted inasmuch as the retreat will be open to the public and under the Brown Act need not be held within the City of Huntington Beach. Study or deliberation without action would not appear to violate the City Charter if no regular, adjourned or special meeting, as classified in the Charter, is involved. The reason for this is that Section 511 of the City Charter provides that no ordinance shall be adopted by the City Council at any time "other than at a regular or adjourned regular meeting" nor shall any "order for the payment of money be adopted or made in any other than a regular or adjourned regular meeting." Although not expressly stated in the Charter, it is the opinion of the City Attorney that no resolution of the City Council may be introduced or adopted at any but regular or adjourned regular meetings. There appears to be no City Charter prohibition against study sessions or informal sessions or retreats at which no "action" is taken.

CONCLUSION:

1. A City Council/Department Head Retreat at which no "action" is taken, held outside the City is not a violation of the City Charter because it is neither a regular or adjourned, or special meeting of the City Council. It is an informal as distinguished from a formal meeting.
2. The City's "Little Brown Act", Section 510 of the City Charter (Citizen Participation), does not prohibit such retreat because said section is limited to "regular and special meetings of the City Council."
3. The Ralph M. Brown Act does apply to such retreat by reason of the broad scope definition of "meeting" which has been grafted upon the Brown Act by court decisions and Attorney General's opinions. The Brown Act itself contains no definition of the term "meeting."

4. The Brown Act does not prohibit the City from holding meetings outside the City. The City Charter does not require informal meetings to be held within the City. The requirement of the City Charter is that formal meetings must be held within the City limits.

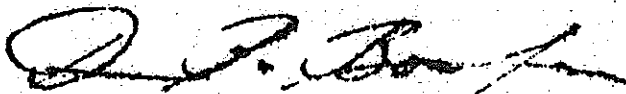
5. Inasmuch as the out-of-town "retreat" is subject to the Brown Act, its times, dates and place must be announced at a regular meeting of the City Council and it must be open to the public and the press. Although probably not technically required, we advise that notice be given pursuant to Section 54956, California Government Code.

6. The reason why no "action" may be taken at an out-of-town retreat is not because of the Brown Act but because if "action" were taken the retreat would de facto become a formal meeting of the City Council and thus, the City Charter requirement that such formal meetings be held within the City limits would apply.

7. We recommend that discretion be used and that in order to avoid criticism, the retreat not be held at a place so distant from the City of Huntington Beach as to create undue hardship upon attendance by the public or press.

8. City Attorney Memorandum Opinion dated May 21, 1973 is superseded by this opinion.

Respectfully submitted,



DON P. BONFA
City Attorney

DPB:er

May 29, 1973

Mr. John M. Powers
City Attorney
City of Vallejo
City Hall,
Vallejo, California 94590

Re: Your letter of May 23, 1973
- Procedure for Handling
Executive Sessions of City Council

Dear Mr. Powers:

The policy described in your letter has never been formalized nor has it been put in writing. I had suggested to the then Mayor and the City Administrator that a policy be developed for the conduct of executive sessions. Nothing further was done except that the City Administrator and I discussed the matter and it was informally agreed that he would submit to me for prior approval all topics to be covered in council executive sessions. This, I think, is a large step in the right direction.

My idea of what the policy should be in this regard is very simple and I will outline it as follows:

1. The City Administrator should submit to the City Attorney a written agenda for each council executive session for prior approval by the City Attorney in terms of the Ralph M. Brown Act, court decisions and other legal sources (e.g. the Attorney General's Pamphlets, City Attorney Opinions, City Attorney Department Conference papers, etc.)
2. The City Attorney should be present in the meeting room during all council executive sessions. This will give the Mayor, who is presiding as chairman of the meeting, legal counsel on whether or not the council is toeing the mark with reference to the Brown Act.
3. Written minutes should be kept of all matters discussed in the executive sessions. Such minutes should be kept by the City Clerk and retained in an executive folder in the City Clerk's vault. The purpose of the minutes, of course, is to make certain that matters discussed and decisions reached in executive session are reported accurately. The human memory is a frail instrument.

Mr. John M. ~~W~~rs
Re: Your letter of May 23, 1973
- Procedure for Handling
Executive Sessions of City
Council

May 29, 1973
Page 2

4. When the City Attorney advises the Mayor that the Council is discussing a matter which should not be discussed in executive session pursuant to the Brown Act, the Mayor should order the Council to discontinue such discussion and to return to legally permitted topics.

5. All persons present at the executive session, including the members of Council, City Administrator, City Attorney, City Clerk, and other staff members, should respect the executive nature of the meeting and all matters discussed therein and should not reveal any executive matters to the press or anyone else without first obtaining prior permission of the City Council.

6. The number of executive sessions should be kept to a minimum.

7. The Council should go into executive session only from and during a council meeting. (It is my position that any council meeting is sufficient for this purpose whether regular, adjourned or special).

8. In announcing that the Council will recess to executive session, the Mayor should indicate what the executive session is being called for. This may be done in general terms, such as: "to discuss litigation" or "to discuss personnel matters". In my opinion, it is not necessary for the Mayor to announce publicly the exact topic by title, thus, it is not necessary for the Mayor to say: "to discuss litigation involving the Doe v. City case" or "to discuss personnel matter involving Jane Smith". To be that specific, it seems to me, may reveal too much information which the law does not require and may give the press leads to follow up in order to break the curtain of secrecy which in proper matters is permitted by the Brown Act.

I trust the above information will be of help to you and if your city develops a policy on the subject of executive sessions, please send a copy to the undersigned.

Very truly yours,

DON P. BONFA
City Attorney

DPB:er

c.c. Mayor Jerry A. Matney
David D. Rowlands, City Administrator

RESOLUTION NO. 4283

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH ADOPTING A CONFLICT OF INTEREST CODE APPLICABLE TO THE MEMBERS OF THE CITY COUNCIL PURSUANT TO THE POLITICAL REFORM ACT OF 1974

THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH RESOLVES AS FOLLOWS:

SECTION 1. ADOPTION OF CONFLICT OF INTEREST CODE. In compliance with §87300 of the Government Code, the City Council hereby adopts this Conflict of Interest Code.

SECTION 2. APPLICATION OF CODE. This Conflict of Interest Code shall be applicable to members of the City Council.

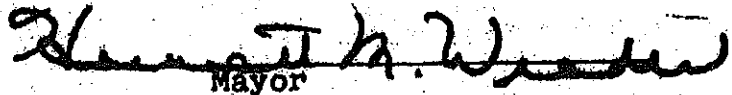
SECTION 3. DISCLOSURE. Members of the City Council are required, pursuant to Government Code §87200, to disclose investments, interests in real property and income. No other or no additional disclosure requirements are imposed by this Conflict of Interest Code.

SECTION 4. CIRCUMSTANCES REQUIRING DISQUALIFICATION. Any member of the City Council, whether acting as a Council member or as governing board member or commissioner of any city agency, including the following:


City of Huntington Beach Redevelopment Agency
Parking Authority of the City of Huntington Beach
must disqualify himself or herself from making or participating in the making of any decisions which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, or any financial interest, as defined in Government Code §87103. No member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made.

SECTION 5. The City Clerk is directed to forward a certified copy of this resolution to the Fair Political Practice Commission.


PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the
16th of August, 1976,


Mayor

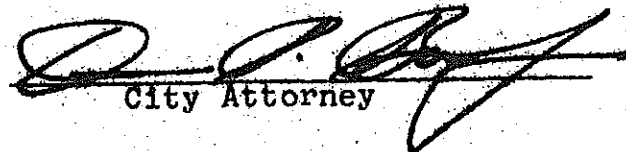
ATTEST:


City Clerk

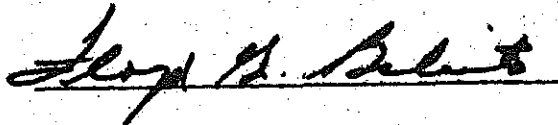
APPROVED AS TO CONTENT:


City Administrator

APPROVED AS TO FORM:


City Attorney

APPROVED, INITIATING DEPARTMENT:



NO FISCAL IMPACT ✓

FISCAL IMPACT -- BUDGETED

FISCAL IMPACT -- NOT BUDGETED

REQUIRES FINANCIAL IMPACT REPORT

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)

I, ALICIA M. WENTWORTH, the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of more than a majority of all the members of said City Council at a regular _____ meeting thereof held on the 16th day of August, 1976, by the following vote:

AYES: Councilmen:

Bartlett, Pattinson, Siebart, Shankman, Wieder

NOES: Councilmen:

None

ABSENT: Councilmen:

Coen, Gibbs

Alicia M. Wentworth

City Clerk and ex-officio Clerk
of the City Council of the City
of Huntington Beach, California

