Essential Hour: Your First Planning Commission Meeting

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DISCLAIMER

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Here is your Planning Commission Essential Toolkit. Take all or some of these reference materials with you to your first few meetings. Even if you don't know the answer off the top of your head, you will know where to look.

Materials in Essential ToolKit

1. Excerpt from Planning Commissioner Handbook
2. Public Hearing Script
3. Conflicts and Brown Act Primer (Key Insights)
4. CEQA Cheat Sheet
5. Script for Disturbances/Warnings
6. Rosenberg's Rules of Order (Link)
7. Open and Public VI: A Guide to the Ralph M. Brown Act (Link)
8. CalCities Resource Search (Link)
9. Bring Your Local Rules of Decorum
10. Bring Your Local Zoning Ordinance

Excerpt from actual City Planning Commission Manual
(Bring to PC meetings when you first start covering meetings)

The following is an outline of standard municipal meeting procedures. These apply to all commissions generally. Some procedures are required by law and some are suggestions of good practice but may be varied. In many cases, the procedures you employ have important legal significance. Before changing procedures, you should consult with the City Attorney or the staff assigned to the commission on which you serve.

The objectives of the procedures are an orderly, fair and public process. The procedures are intended to help you get through the items on the commission's agenda in an open meeting and provide the public an opportunity to participate.

Commission meetings are business meetings. They are not a general community forum. This is important because people decide in advance whether to attend a meeting based on the agenda that is posted for the public's benefit. A commission generally may discuss only matters listed on the posted agenda. As a result, members of the public will know when items of interest to them will be discussed. Aside from being illegal, it is also not fair to discuss matters that are not on a posted agenda. Even when a member of the public raises a subject during community comments, remember that people with different points of view have not been given notice of the meeting and therefore have no opportunity to participate.

The state Open Meeting Law is called the Brown Act and it governs commission meetings. The Brown Act provides that all commission meetings must be open and public.

TYPE OF MEETINGS:

REGULAR MEETINGS: Commissions have an established day, time and place to meet. These meetings are "regular meeting." For example, the City Council's regular meetings are the 1st and 3rd Mondays of each month at 7:00 in the Council Chambers. The Planning Commission's regular meeting is the 2nd Monday of each month at 7:00 in the Council Chambers. All regular business of a commission generally should be conducted at the regular meetings. Once the meeting is adjourned, the commission may not meet again until the next regular meeting, unless the commission adjourns to a different time and place or unless a special meeting is called. Field trips and "study sessions" occurring on a date other than a regular meeting date are adjourned meetings or special meetings.

ADJOURNED MEETINGS: At the conclusion of a regular meeting, the chair may adjourn the meeting to a specific time, place and date. This allows for a continuation of the regular meeting if the agenda has not been completed or to add additional items before the next regular meeting. If a regular meeting of the commission is adjourned to another time, the commission secretary posts notice of an adjourned meeting. Adjourned meetings can be again adjourned to a date, time and place specific; however, once any meeting is finally adjourned, it cannot be reconvened. To meet after that, a special meeting would have to be noticed.

SPECIAL MEETINGS: Special meetings may be called by the chair or a majority of the members of a commission under the following guidelines:

- Written notice must be delivered personally or by mail to each member of the commission, the commission secretary and the local newspapers, at least 24 hours prior to the time of the meeting. Notices should also be posted, at least 24 hours prior to the time of the meeting, at the posting places within the City designated for the posting of notices.

- The notice must contain the subjects of the meeting and only those subjects may be considered at the special meeting.

Be sure to get the assistance of City staff or the City Attorney whenever you wish to convene a meeting other than a regular meeting. The Brown Act contains specific requirements for posting an agenda and providing the public notice of the meeting.

CONDUCT OF MEETINGS:

CHAIR: The chair presides at all commission meetings. The commission shall, by majority vote, elect a chair and elect a vice-chair to serve in the absence of the chair.

COMMISSION SECRETARY: The commission secretary takes and prepares minutes of a commission meeting and is responsible for ensuring that notices of meetings are properly posted or delivered.

AGENDA: The agenda must provide a brief description of each item of business to be discussed. The commission may only discuss matters reasonably within the scope of the agenda description. Under the Brown Act agendas for regular meetings shall be posted no later than 72 hours in advance of a meeting.

MINUTES: Minutes of all meetings must be prepared and submitted to the commission for approval. The minutes are not a transcript or a complete record of the proceedings and need only accurately reflect the actions taken by the commission.

MEETINGS OPEN TO PUBLIC: All meetings must be open to the public in accordance with the Brown Act. Every agenda for regular meetings must provide an opportunity for members of the public to directly address the commission on items of interest to the public that are within the subject matter jurisdiction of the commission but not on the agenda. Also, members of the public must be provided an opportunity to address the commission on any agenda item prior to, or concurrently with, the commission's consideration of the item. The commission may establish its own procedures relative to public participation during the conduct of commission business, provided the procedure does not conflict with the Brown Act.

QUORUM: A quorum, which consists of a majority of the members of the City Commission, must be present at all times during the meeting.

CONDUCT OF HEARINGS: The general manner of conducting hearings is within the control and discretion of the Chair. After sufficient discussion and presentation of a matter, either the Chair or any member entitled to vote upon the matter being heard may introduce a motion to decide the matter.

THE REOPENING OF HEARINGS. No hearing that has once been closed may be reopened without additional notice in the same manner as the original hearing, unless the hearing is reopened at the same meeting it was closed and before the Commission has taken up another matter. Once the Commission has taken final action on an administrative item, the Commission loses jurisdiction and the hearing may not be reopened unless the matter has been remanded to the Commission by the City Council.

HE/SHE WHO DECIDES MUST HEAR: When the commission is acting in an adjudicative capacity,[1] and if a commissioner is to vote on a matter which is the subject of a public hearing, the commissioner should be present during the public hearing. However, if the public hearing has been closed and continued for a decision to another date, or the hearing continued to another date, an absent member can vote if the member listened to the full tape of the prior hearing or hearings and read all documents considered at the prior hearings on the matter and states that she or he has done so on the record at the hearing.

LIMITATIONS ON COLLECTING EVIDENCE OUTSIDE OF THE HEARING: The concept of a fair hearing includes the requirement that all evidence that serves as the basis of an adjudicative decision must be in the "record" so that it is subject to challenge or rebuttal by others. The "record" consists of all the written material submitted to the commission before or at the meeting and the testimony presented to the commission at the meeting. Commissioners that collect evidence outside of the public hearing can create a legal problem and compromise the fairness of the hearing. For example, from time to time the commissioners may find it desirable to visit the site that is the subject of an application before the commission. So long as the

1/ The commission acts in an adjudicative capacity (also called quasi-judicial) when it is applying the law to a specific application, such as when the Planning Commission considers a development application.

commissioner indicates on the record at the time of the hearing and before the public has had an opportunity to speak that he or she has visited the site and describes what was seen, a site visit will not affect the validity of the hearing. Commissioners should avoid speaking to applicants or other members of the public about a matter that is the subject of an adjudicative decision. In the event that they do have a conversation with a member of the public on such a matter, the commissioner should state on the record whom he or she spoke with, and the subject of the conversation. In this way the "evidence" obtained by the individual Commissioner outside of the hearing will become part of the record, and will be subject to rebuttal during the hearing.

PUBLIC HEARING PROCEDURE

Chair: States purpose of hearing, opens hearing.
Requests Staff Report.

Staff: Presents report

Chair: Requests Members to ask any questions they may have of Staff regarding Staff Report, and to place on the record any statements on whether Commissioners visited site and that they saw, or whether they spoke to anyone concerning this matter (also called ex parte disclosures).

Requests public testimony.

Chair should instruct those persons testifying that all comments and questions be directed to the Chair and not to other members of the audience. Questions by commissioners of persons in the audience should be asked before the hearing is closed, preferably when the person is testifying.[12] Comments by commissioners should be reserved until all testimony is taken and the public hearing closed. The commission may set a time limit for comments by each person testifying

PUBLIC: Testimony is received.

Applicant or appellant (if an appeal from a Planning Director's decision) should go first and should be given time for rebuttal. If the appellant is not the applicant, the applicant should be afforded equal time (because the applicant has a specific legal interest at stake)

2/ In cases when there is evidence on both sides of the issue or when the evidence is not adequately presented by the opponents or proponents of a project, it is essential that the members of the Commission ask questions which ensure that the relevant evidence is in the record and explain the evidence upon which they are relying in making a decision.

Chair: Closes public hearing.

COMMISSION: Deliberates, makes findings and decision.

A note about applause: The purpose of the public meeting is to afford any interested member of the public an opportunity to participate. This means that the City wants to encourage those with differing viewpoints to participate. When a lot of people who share a view come to a meeting and applaud one another, the result can be an environment intimidating to those with differing views. Sometimes it is best to just state this at the beginning when it seems like a lot of people have come to express a similar view.

SAMPLE PUBLIC HEARING SCRIPT

This is the time and place for a public hearing to consider [describe].

Is there a Staff Report?

Does any Commissioner have any questions of staff on this matter?

Do Commissioners have any ex parte disclosures to make? [Commissioners state any on site visits and evidence outside the hearing relating to this matter]

We will now listen to public testimony. All questions and comments on this matter are to be directed to the Commission, not the audience. Questions will be answered by staff at the close of testimony.

Applicant, please make your presentation at this time.

I will now call the speakers in the order received. I will also call the name of the next speaker so that you may move toward the podium. _____ to be followed by ______.

Applicant, do you wish to make any further statement or rebuttal before the hearing is closed?

Do any Commissioners have further questions before the public comment portion of the hearing is closed?

(Staff answers all questions asked by public during the course of the hearing.)

The public testimony portion of the hearing is now closed.

(Commission deliberates and may ask questions of staff. <u>All comments</u> should be reserved by the Commissioners until this time. Statements of opinion during the hearing may be regarded as prejudgment of the matter.)

IMPORTANCE OF FINDINGS IN QUASI-JUDICIAL ACTIONS

The City Planning Commission performs a quasi-judicial function. In other words, the Commission will sit as a "judge" in determining whether a particular land use entitlement, such as a variance or a conditional use permit, is appropriate for a particular piece of property. The following discussion, excerpted from a Publication by the State Office of Planning and Research, discusses the importance of the Commission making findings showing the reasons the Commission made its decision.

FINDINGS ARE THE CORNERSTONE OF GOOD DECISION-MAKING

The Supreme Court has defined findings, explained their purposes and determined when they are needed.

Definition

The court defined findings as legally relevant subconclusions which expose the city's mode of analysis of facts, regulations, and policies, and bridge the analytical gap between raw data and ultimate decision. In other words, findings are the legal footprints city officials leave to explain how they progressed from the facts through established standards to the decision.

Purpose

The court outlined four purposes for making findings, two of which are relevant mainly to the decision-making process, and the other two relevant to judicial review functions. Findings should accomplish the following:

1. Provide a framework for making principled decisions, enhancing the integrity of the administrative process;

2. Help make analysis orderly and reduce the likelihood that the agency will randomly leap from evidence to conclusions;

3. Enable the parties to determine whether and on what basis they should seek judicial review and remedy; and,

4. Apprise a reviewing court of the basis for the agency's action.

Circumstances Requiring Findings

While the four purposes seem clear enough, state law has not clearly distinguished between the situations which require findings from those which do not. Absent a specific statutory requirement for findings, the courts determine when they are necessary. In general, case law has required findings for land use decisions that are

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adjudicative in nature (also known as quasi-judicial, administrative, or adjudicatory decisions). In this type of decision, the commission holds a hearing, takes evidence, and bases its decision on the evidence. The action involves applying a fixed rule, standard, or law to specific facts and a specific parcel of land. Examples include variances, use permits, and tentative subdivision and parcel maps. In each case local officials apply existing land use or other development standards to specific parcels.

By way of comparison, findings are not necessary for legislative acts, unless specifically required by statute. In contrast with adjudicative acts, legislative acts generally formulate a rule to be applied to all future cases rather than applying an existing rule to a specific factual situation. Examples are the adoption or amendment of a general plan or zoning ordinance.

SUMMARY: BRIDGING THE GAP

California courts have demonstrated their concern for rational and open land use decisions that protect the public interest. The California Supreme Court offered four purposes for findings, all emphasizing these concerns. The now familiar language of "bridging the analytical gap between raw data and ultimate decision" leaves no doubt that courts intend decision-makers to follow an orderly path of logic before arriving at decisions. While the political reality of making land use decisions involves compromises at times, the political reality must accommodate rational and dispassionate deliberation in the decision-making process.

In the area of land use planning, local decision-making bodies must adopt findings when making adjudicative decisions -variances, conditional use permits, tentative subdivision and parcel maps, and public street abandonments. Further, Public Resources Code Section 21081 requires decision-making bodies to make one or more findings when an EIR identifies a proposed project's significant environmental effects. Some state statutes require findings before jurisdictions approve certain legislative decisions, such as growth limiting general plans and growth limiting zoning ordinances. The process of making land use decisions has its rough edges: economic impacts, election campaigns, tender egos, and neighborhood conflicts. Making findings as an integral part of the decision-making process will not guarantee that all of the rough edges will be smoothed out. However, if decision-making officials take findings seriously, they can reduce the public's doubts about the wisdom of their decisions and reduce public skepticism about their motivations. Using findings builds an excellent defense for local officials' decisions, and ultimately more justly serves the public purposes of regulating land use.

PUBLIC HEARING SCRIPT

CHAIR
Planning Commission

We will now begin the public hearing on Item #______________________________ .

Is there a staff report?

[Staff Gives Report]

Does any Commissioner have any questions of staff at this time?

Does any Commissioner have any disclosures to make?

[Each Commissioner should be given an opportunity to describe any site visits to the business, conversations or other evidence received before the meeting that is not in the staff report and will affect the Commissioner's decision on the matter. That way the other Commissioners and the public know on what information the Commissioner is basing his or her decision.]

We will now begin the public comment portion of the hearing. All questions and comments on this matter are to be directed to the Commission, not the audience.

Is the Applicant present? Please approach the podium to make your presentation.

[Applicant presents and Commissioners can ask Applicant questions]

Is there anyone from the public wishing to speak on this item?

Applicant, do you wish to make any further statement in rebuttal before the public comment portion of the hearing is closed?

Do any Commissioners have further questions before the public comment portion of the hearing is closed?

I'll now close the public comment portion of this hearing and bring the matter back to the Commission for discussion and deliberation.

[Commission deliberates and may ask questions of staff. All comments should be reserved by the Commission until this time. Statements of opinion during the hearing may be regarded as prejudgment on the matter]

Avoiding Financial Conflicts of Interest — Should I Participate in this Decision?

The Political Reform Act of 1974 (Gov. Code Sections 81000–91014) forms the foundation for California's financial conflict of interest laws for public officials. The purpose is to cover both actual and apparent conflict of interest situations between a public official's private interest and their public duties.

The basic rule is that no public official shall make, participate in making, or in any way attempt to use their official position to influence a governmental decision if they know, or have reason to know, that they have a financial interest in the decision.

Who Should Avoid Financial Conflicts of Interest?

All decision-making public officials for local government agencies which includes every member, officer, and employee of a local government agency, as well as consultants to a local agency who meet certain criteria. Public officials may also include members of public agency boards, councils, commissions, and committees with decision-making authority.

If you are a public official who may make, participate in making, or in any way influence a public agency decision, this resource will help determine whether you have a potential financial conflict of interest that has to be addressed.

Do I Have a Financial Conflict of Interest Under the Political Reform Act?

Before making a decision or discussing a future decision of your public agency, try to answer the following questions:

1. Will you be "participating in a decision?"

You are "participating in a decision" of your public agency by doing any of the following:

- **Making an actual decision —** Voting, making an appointment, or taking an action that obligates or commits your public agency.
- **Contributing to the decision-making process —** Making a recommendation or participating in negotiations about the public agency decision.
- **Influencing the decision —** Making your position known, discussing the decision with other agency officials, providing reports, or influencing others (such as staff or consultants) who are involved in the decision-making process.

2. Does the decision affect one or more of your "financial interests?"

A financial conflict of interest can exist if the public agency decision you are participating in affects (positively or negatively) any of your "financial interests" as described in the Act and listed here:

- **Business Interest:** Any for-profit business entity in which you or your immediate family (spouse and dependent children) have a direct or indirect investment worth $2,000 or more. You also have a financial interest in any business in which you are an employee, manager, officer, director, owner, partner or trustee, regardless of whether you have an investment or receive income from the entity.
- **Source of Gross Income:** A public official has a financial interest in any source of income that is either received by or promised to the official and totals $500 or more in the 12 months before the decision. Income is very broadly defined as "a payment received" with few exceptions. Examples of income include salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, loan, forgiveness or payment of debt, or community property interest in income of a spouse. The FPPC regulations make it clear that a conflict of interest results whenever either the amount or the source of an official's income is materially affected by a decision. Also, a decision that foreseeably will materially affect an official's employer would generally necessitate a disclosure and disqualification, even if the amount of income received by the official was not affected. Common exclusions from income include loans from commercial lending institutions in the ordinary course of business made on terms available to the general public, campaign contributions, government salaries and benefits, monetary inheritances, and alimony or child support payments.
- **Gift Interest:** Any gift(s) — cash, goods or services — promised or given to you in the past 12 months by a person, business, or other entity totaling $630 or more in value. The dollar limit is adjusted biennially in odd-numbered years based on the Consumer Price Index (CPI).
- **Real Property Interest:** Any real property interest, including ownership, mortgage, lease, easement or license, or option to acquire such interest in real property, located in the public agency's jurisdiction owned directly or indirectly by you or your immediate family if the fair market value of the real property interest is $2,000 or more. Month-to-month tenancies are not considered an interest in real property. Interest in real property also includes a pro rata share of a business entity's real property or trust in which the public official or immediate family owns, directly or indirectly, a 10 percent interest or greater.

- **Personal Financial Interest:** Any personal expense, income, asset, or liability of you or your immediate family (spouse and dependent children).

3. Will the public agency decision have a reasonably foreseeable "material financial effect" on any of your financial interests?

Participation in a decision that affects your financial interest creates a conflict of interest only if it is reasonably foreseeable (a realistic possibility) and the effect is "material."

In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result can be expected only in extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. In determining whether a governmental decision will have a reasonably foreseeable financial effect on a financial interest other than an interest explicitly involved, described above, the following factors should be considered:

a. The extent to which the occurrence of the financial effect is contingent upon intervening events.
b. Whether you should anticipate a financial effect on your financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.
c. Whether you have a financial interest that is of the type that would typically be affected by the terms of the governmental decision.
d. Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of your financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.

This is not an exclusive list of all the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable.

"Material" means important or significant, and often depends upon whether or not the interest is explicitly involved. For each financial interest you identified as potentially affected by the decision, review the corresponding analysis below to determine whether the effect is material.

- **Business, Source of Income, and Gift Financial Interests —** Explicitly Involved: If your financial interest is explicitly involved (i.e., the subject of or a named party in the decision), the financial effect of the decision on your financial interest is presumed to be material unless you can demonstrate that the decision will not have a financial effect on your financial interest.
- **Business, Source of Income, and Gift Financial Interests —** Not Explicitly Involved: A reasonably foreseeable financial effect on a business entity is material if it results in 1) a change in gross revenues or in the value of assets or liabilities by at least $1 million or 5 percent of annual gross revenues, or 2) a change in business expenses of $250,000 or more or of 1 percent of annual gross revenues and the change is at least $2,500; or if the business entity owns property that is the subject of the decision or would be substantially effected by the decision.
- **Real Property Interest —** Explicitly Involved: When your real property interest is explicitly involved in a public agency decision, the reasonably foreseeable financial effect is presumed material. A real property interest is explicitly involved when the decision includes matters such as the property's zoning, annexation, sale, lease, licensed or permitted use, taxes, fees, or improved services to the property.
- **Real Property Interest —** Not Explicitly Involved: When the real property is not explicitly involved, a decision's reasonably foreseeable financial effect is presumed material if, among other things, any part of the property in which you have a financial interest is within a 500-foot radius of the real property involved in the decision, unless it is clear the decision will not have a measurable impact on your property. If your property is located more than 500 feet, but less than 1,000 feet, from the property line of the property involved in the decision, the financial effect is material if the decision would have certain specified impacts, such as changing the parcel's view, noise or traffic level, development or income-producing potential, best use, character, or market value.

  If the real property in which you have a financial interest is 1,000 feet or more from the property involved in the decision, the financial effect of the decision on your real property interest is presumed not to be material unless the specific circumstance of the decision and the nature of your property interest make it reasonably foreseeable that the decision will have a significant financial effect on your real property interest. Factors include the development potential of the property, use of the property, and character of the neighborhood.

- **Real Property Interest —** Leasehold Interest: If you have a leasehold interest in real property as opposed to an ownership interest, your leasehold interest in the property is material if the decision changes the termination date of the lease, affects the potential rental value of the property, changes your actual or legally allowable use of the property, or impacts your use and enjoyment of the property
- **Personal Financial Interest:** The financial effect of a decision on your personal financial interest is material if the decision may result in you or your immediate family member receiving a financial benefit or loss of $500 or more in any 12-month period due to the decision.

5. Does the decision affect your financial interests differently from the "public generally?"

Even if you answered "yes" to the first three questions, you have a financial conflict of interest only if the decision affects you differently from the public in general. The financial effect of a decision is indistinguishable from its effect on the public generally if you establish that a significant segment of the public is affected and the effect on your financial interest is not unique compared to the effect on the significant segment.

A significant segment of the public is at least 25 percent of:

- **Business Interest —** All businesses or nonprofit entities within your jurisdiction.
- **Real Property Interest —** All real property, commercial real property, or residential real property within your jurisdiction.
- **Individuals —** All individuals within your jurisdiction.

If you are elected to represent a specific district/area in the public agency, your "jurisdiction" is that district/area; otherwise, your jurisdiction is the agency's jurisdiction.

A significant segment of the public is at least 15 percent of residential property within your agency's jurisdiction if the only interest you have in the decision is your primary residence.

Specific rules exist for special circumstances involving public service and utility charges, general use or licensing fees, decisions with limited neighborhood effects, rental properties, required representative interests as part of a board or commission membership, states of emergency, and governmental interests.

What Should I Do if a Financial Conflict Exists?

1. Do not participate in the decision.

If you answered “Yes” to all four questions above, you most likely have a financial conflict of interest and you are prohibited from participating in the decision-making process. Do not participate in the discussion or render any opinion or advice, and do not act in any way that might influence the decision.

2. Disclosure and recusal are required.

State law requires you to publicly disclose your financial conflict of interest on the record and excuse yourself from the meeting while the matter is being considered in open session. You generally do not have to excuse yourself on consent calendar items unless the item is pulled, but must publicly disclose the type of your financial interest (i.e., business entity, real property, etc.) that gives rise to the conflict of interest.

3. Do not commit violations of the Political Reform Act (PRA)

Violation of the PRA can result in administrative fines, civil penalties, and criminal sanctions.

Other Conflict of Interest Laws

Two other key financial conflict of interest laws apply to public officials that you may encounter as either a board or council member, public employee, or consultant in the decision-making process:

1. Self-Interested Contracts (Government Code Section 1090)

This key law prohibits you, as a local official or employee, from voting on, discussing, or negotiating a proposed contract or sale with your public agency if you could receive some financial gain or loss from the contract or sale. Even if you abstain as a board or council member, the entire board or council is prohibited from entering into the contract unless an exception applies. Any contract signed by a public agency board or council in violation of Section 1090 is void. The rule is different if you are a decision-making employee not on the board or council. A public agency employee may disclose their financial interest in the public agency contract and be disqualified from any involvement, allowing the board or council to enter the contract legally. Violation of this law will void the contract or sale and may result in permanent forfeiture of office for elected officials. There are limited exceptions to this law that are beyond the scope of this resource.

2. Campaign Contributions (Government Code Section 84308)

If you are a directly elected or appointed public official, this law (known as the Levine Act) prohibits you from participating in proceedings involving licenses, permits, or other entitlements for use that affect a person, business, or other entity from which you have received a campaign contribution of more than $500 within the preceding 12 months, and requires you to disclose on the record the receipt of any such contribution. In addition, this law prohibits you from accepting campaign contributions of more than $500 from a party or participant in the proceeding for 12 months after a final decision is rendered in a proceeding.

The Brown Act

The Ralph M. Brown Act (California Government Code Section 54950 through 54962), often referred to as “the open meeting law,” guarantees the public’s right to attend and participate in meetings of local legislative bodies. The act includes requirements that affect the taking of minutes, including what must be in different situations. This resource provides a summary of the Brown Act’s requirements for the minutes in various circumstances, including teleconferenced meetings, non-agenda items, and closed sessions.

In adopting the Brown Act in 1953, the California Legislature's intent was clear: "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."

By preparing accurate and complete minutes of discussions and actions undertaken by local government bodies, local agencies ensure the public receives an accounting of the important work carried out by their representatives.

What to Include in the Minutes?

Open Sessions

- All actions taken by the legislative body in open session
- Any votes cast by members If a writing is a public record related to an agenda item for an open session of a regular meeting of a legislative body and is distributed to all, or a majority of all, of the members of a legislative less than 72 hours before that meeting, the writing shall be made available for public inspection (Section 54957.5(b))

Teleconferencing (Section 54953)

- Record that an agenda including relevant teleconference information notice was posted, that a quorum participated from locations within the jurisdiction or a single primary location (depending on the type of teleconferencing used), and other teleconference requirements were followed (Section 54953).
- If meeting remotely during a proclaimed emergency, document findings that either the emergency directly affects meeting safely in person or that state or local officials continue to impose or recommend measures to promote social distancing (Section 54953(e)).
- If a member participates remotely for "just cause" or under emergency circumstances, record the circumstances of their remote attendance, that at least a quorum participated in person from a single physical location, and that the remote member(s) disclosed whether there was anyone 18 years of age or older in the remote location and their relationship to that person (Section 54953(f)).

Meeting Outside Jurisdiction

- Record reason for the meeting to be held outside jurisdiction (Section 54954)

Action on Non-Agenda Items

- Emergency — Record that a majority vote was to invoke an emergency and a description of the emergency (Section 54954.2).
- Immediate Need — Note that a 2/3 vote of the legislative body present at the meeting or, if less than 2/3 of the members were present, a unanimous vote of those members present, was taken and the grounds were articulated by the body for invoking the rule (Section 54954.2).
- Adjourned Meetings (Section 54955)
- Special Meetings — A waiver of notice was agreed to by legislative body members (Section 54956).
- Emergency Meetings — Record special requirements for posting and what to include in the minutes (Section 54956.5).

Pre-Closed Sessions — Announcements

- Record that an open session announcement was made (Section 54957.7).
- Content — It may include a reference to the item as listed on the agenda and may be made at the location of the closed session as long as the public is allowed to be present at that location.
- Real Property — Record that a special announcement was made (Section 54956.8).
    - Special Announcement: Identify negotiators, the real property concerned, and the party whom negotiations are with.
- Pending Litigation — State on the agenda or announce the paragraph of Section 54956.9(d) that authorized the closed session.

Post-Closed Session Announcements

- A disclosure report may be made orally or in writing and may be made at the location of the closed session as long as the public is allowed to be present at that location.

Real Estate Negotiations

- Note whether a body finalizes a signed agreement (i.e., the other party signed before the agency signed) in closed session. (Section 54957.1(a)(1)(A).)
  - Disclosure must be made in open session during the same meeting.
  - The report must include (1) the acceptance action, (2) the voting tally, and (3) the substance of the agreement.
- However, if the other party or court must finalize the agreement (i.e., the other party signs after the agency signed), disclosure must be made as soon as the agency is informed of approval by the other party. (Section 54957.1(a)(1)(B))
  - No disclosure is required in open session, but disclosure must be made to any person who asks.
  - The report must include (1) the fact of the approval action, (2) the voting tally, and (3) the substance of the agreement.

Personnel Actions

- Record whether a body takes action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session. (Section 54957.1(a)(5))
  - Disclosure must be made in open session during the same meeting.
  - The report must include (1) the reportable action, (2) the voting tally, and (3) the title of the position involved.
- However, if the body takes action to dismiss an employee or not renew an employment contract, and the dismissal or nonrenewal is subject to further administrative remedies, disclosure must be made in open session at the first public meeting after exhaustion of the administrative remedies.
- If a body considers an action to dismiss an employee or not renew an employment contract, but ultimately retains the employee, no disclosure report is required (Attorney General Opinion - 89 Ops. Cal.Atty.Gen. 110 (2006)).

Labor Negotiations

- If a body approves an agreement that concludes labor negotiations with represented employees:

  - Disclosure must be made after the agreement is final and has been accepted or ratified by the other party. The Brown Act does not specify whether this disclosure must be during open session or may instead be made only when asked.
  - The report must include (1) the approval action, (2) the voting tally, and (3) the other party to the agreement.

Approval of Initiating or Intervening in Litigation

- If the body approves initiation of, or intervention in, litigation:
  - Disclosure must be made in open session during the same meeting.
  - The report must explain (1) that the body gave direction to initiate or intervene in litigation and (2) that additional particulars will, upon inquiry, be disclosed after the litigation formally commenced.
- If the litigation authorized by the body has formally commenced and disclosure would not jeopardize the agency's ability to effect service on parties or conclude existing settlement negotiations to the agency's advantage:
  - No disclosure is required in open session, but a report must be provided to any person who asks after the lawsuit is filed.
  - The report must include (1) the approval action, (2) the voting tally, (3) the defendants, and (4) particulars about the substance of the litigation.
- If the litigation authorized by the body has formally commenced and disclosure would jeopardize the agency's ability to effect service on parties or conclude existing settlement negotiations to the agency's advantage:
  - No disclosure is required in open session, but a report must be provided to any person who asks after process has been served on unserved parties, if that was the concern, or the settlement negotiations have concluded, if that was the concern.
  - The disclosure report must include (1) the approval action, (2) the voting tally, (3) the defendants, and (4) particulars about the substance of the litigation.

Approval of Certain Litigation Actions

- If a body approves a litigation defense, filing an appeal or filing an amicus curiae brief, then:

  - Disclosure must be made in open session during the same meeting.
  - The report must include (1) the approval action, (2) the voting tally, (3) the adverse parties (if known), and (4) the substance of the litigation at issue (Section 54957.1(a)(2)).

Approval of Settlement Agreements

- If a body gives approval to legal counsel to settle pending litigation and accepts a settlement offer signed by the opposing party in closed session:
  - Disclosure must be made in open session during the same meeting.
  - The report must include (1) the acceptance action, (2) the voting tally, and (3) the substance of the agreement.
- However, if the other party or court must finalize the agreement (i.e., the other party signs after the agency signed), when the settlement is final:
  - No disclosure is required in open session, but must be provided to any person who asks.
  - The report must include (1) the fact of the approval action, (2) the voting tally, and (3) the substance of the agreement.

Disposition of Claims

- If a body makes a decision pertaining to claims for the payment of tort liability, losses, public liability losses, or workers' compensation liability incurred by a joint powers agency or a local agency member of the joint powers agency:
  - Disclosure must be made after the agreement as soon as disposition is reached. The statute does not specify whether this disclosure must be during open session or may instead be made only when asked.
  - The report must include (1) the name of the claimant, (2) the name of the agency claimed against, (3) the substance of the claim, (4) the voting tally, and (5) any monetary amount approved for payment and agreed upon by the claimant.

Pension Funds

- If a body makes a pension fund investment transaction decision:
  - Disclosure must be made at the first open meeting held after the earlier of (1) the close of the investment transaction or (2) the transfer of pension fund assets for the investment transaction.
  - A roll call vote must be entered into the minutes of the closed session.
  - The report must include (1) the approval action and (2) the voting tally.

Common Safe Harbor Listings for Closed Sessions

Conference with Real Property Negotiations (Section 54956.8)

- Property: Specify street address or, if no street address, the parcel number or other unique reference, of the real property.
- Agency Negotiation: Report the names of negotiators attending the closed session; if the specified negotiator cannot attend, announce who will attend at the open session before the closed session.
- Negotiating Parties: Specify the name of the party (not the agent).
- Under Negotiation: Specify whether the instruction to the negotiator will concern price, terms of payment, or both.

Conference with Legal Counsel — Existing Litigation (Section 54956.9(d)(1))

- Name of Case: Specify by reference to claimant's name, names of parties, case, or claim numbers.
- Case Name Unspecified: Specify whether disclosure would jeopardize service of process or existing settlement negotiations.

Conference with Legal Counsel — Anticipated Litigation

- Significant exposure to litigation under Section 54956.9(d)(2) or Section 54956.9(d)(3): Specify number of potential cases.
- The agency may also have to provide additional information on the agenda or in an oral statement before the closed session (Section 54956.9(e)(2)-(5)).
- Initiation of litigation under Section 54956.9(d)(4): Specify the number of potential cases.

Liability Claims for Insurance Pool JPAs or a Member Agency (Section 54956.95)

- Claimant: Specify the name unless unspecified under Section 54961.
- Agency Claimed Against: Specify the name of the agency.

Threat to Public Services or Facilities (Section 54957(a))

- Consultation with: Specify the name of the law enforcement agency and title of officer or name and title of the applicable agency representative.

Public Employee Appointment (Section 54957(b)(1))

- Title: Specify the description of the position to be filled.

Public Employment (Section 54957(b)(1))

- Title: Specify the description of the position to be filled.

Public Employee Performance Evaluation (Section 54957(b)(1))

- Title: Specify the position and title of the employee being reviewed.

Public Employee Discipline/Dismissal/Release (Section 54957(b))

- No additional information is required.

Conference with Labor Negotiators (Section 54957.6)

- Agency Designated Representatives: Specify the names of designated representatives attending the closed session; if the designated representative(s) cannot attend, announce who will attend at the open session before the closed session.
- Employee Organization: Specify the name of the organization representing the employee or employees in question.

  -or-

- Unrepresented Employee: Specify the position and title of the unrepresented employee who is the subject of the negotiations.

The Levine Act

The Political Reform Act of 1974 (Gov. Code § 81000 et seq.) prohibits agency officers from accepting, soliciting or directing a contribution of more than $500 from a party or participant (or their agents) while a proceeding involving a license, permit, or other entitlement for use, including a contract, is pending before the agency, and for 12 months after a decision, if the officer knows or has reason to know the party or participant has a financial interest in the decision. (Gov. Code § 84308.) This provision is commonly known as the "Levine Act."

The Levine Act also requires agency officers who received a contribution of more than $500 within the preceding 12 months from a party or participant to disclose that fact on the record, and to recuse themselves from making, participating in making, or using their official position to influence a decision in the proceeding if the officer **willfully or knowingly** received a contribution exceeding the limit in the previous 12 months from a party, a participant or their agent.

Willfully or knowingly includes, among other things: actual knowledge of the contribution; a party or participant has made two or more contributions of more than $500 in the past; the officer personally solicited the contribution. A contribution being reported under campaign finance laws is not enough to prove actual knowledge.

Officers of public agencies as it relates to the Levine Act are considered anyone who is:

a. In an elected position;
b. A member of a board or commission (elected or appointed);
c. The chief executive of a state or local agency of any kind, including cities, districts, or joint powers agencies; or
d. In any position with decision-making authority with respect to certain proceedings and also a candidate for elected office or was a candidate for elected office in the 12 months before a proceeding.

Please note that the Levine Act also contains restrictions applicable to "parties," "participants," and "agents" to proceedings. Each of these types of individuals or entities are discussed below, but this resource is generally intended to inform Officers about their duties under the Levine Act.

If you believe the Levine Act may apply to your situation, you should engage qualified legal counsel to help you navigate these issues.

What Restrictions and Responsibilities Apply to Officers?

In an "entitlement for use proceeding," Officers are prohibited from accepting, soliciting, or directing a contribution of more than $500 from any party or a party's agent, or from any participant or a participant's agent if the Officer knows or has reason to know that the participant has a financial interest in the proceeding.

This prohibition applies while the proceeding is pending and for 12 months following the date of the final decision in the proceeding.

If an Officer willfully or knowingly received a contribution of more than $500 within 12 months before a proceeding from a party or party's agent, or a participant or participant's agent where the Officer knows or has reason to know that the participant has a financial interest in the proceeding, the Officer is prohibited from making, participating in making, or in any way attempting to influence the decision in the proceeding.

If the Officer has received a contribution of more than $500 from a party, participant, or agent within the 12 months before the proceeding, the Officer is required to disclose the contribution orally or in writing in the manner required by the Levine Act and implementing regulations.

What Proceedings Are Covered by the Levine Act?

A "proceeding" is broadly defined and includes decisions to grant, deny, revoke, restrict, agree to, amend, or modify any business, professional, trade, or land use licenses and permits, franchises, and *most* types of contracts.

Examples include decisions on professional license revocations, conditional use permits, rezoning of real estate parcels, zoning variances, tentative subdivision and parcel maps, consulting contracts, service agreements, purchase orders, cable television franchises, garbage service franchises, building and development permits, public street abandonments, and private development plans.

However, a "proceeding" does not include competitively bid contracts, contracts under $50,000, labor contracts (such as MOUs with labor groups or project labor agreements), personal employment contracts (such as employment agreements with the local agency's executive or in-house legal counsel), contracts between government agencies, contracts where no party receives financial compensation, or periodic review or renewal of development agreements or competitively bid contracts with no material changes.

When Does a Proceeding Become "Pending?"

For Officers, a proceeding becomes "pending" when:

1. the decision is before the Officer or Officer's legislative body for consideration, such as when an item is placed on a legislative body's agenda for discussion or decision at a public meeting; or

2. the Officer knows or has reason to know the proceeding is before the Officer's agency for an action or decision, and it is reasonably foreseeable the decision will come before the Officer in their decision-making capacity.

(Please note that a proceeding becomes "pending" at a different point for parties, participants, and their agents. For these persons, it is "pending" when the matter is before the agency for action, such as when an application or proposal for a contract has been submitted.)

Who Is a Party, Participant, or Agent in a Proceeding?

A "party" means any person who files an application for, or is the subject of, a proceeding.

A "participant" is much broader and generally means a person who is not a party but who actively supports or opposes a particular decision in a proceeding ***and*** who has a financial interest in the decision.

For example, a person will generally be considered a participant if the person has a financial interest in a proceeding and communicates with an Officer or his or her agency for the purpose of influencing a decision in the proceeding. This includes when a person lobbies in person, testifies in person (such as during public comment), or otherwise acts to influence a proceeding by communicating with an Officer or the agency to influence the proceeding, whether in person or by other means.

A participant is considered to have a "financial interest" under the Levine Act in the same way that people or entities can have a financial interest for conflicts of interest under the Political Reform Act. For example, a participant may have a financial interest in a proceeding based on their interests in business entities, real property, sources of income, sources of gifts, or personal finances, and it has to be reasonably foreseeable that the proceeding would have a material financial effect on one or more of their financial interests.

An "agent" of a party or participant in a proceeding is a person who: (1) represents a party or participant for compensation; and who (2) appears before or otherwise communicates with the agency for the purpose of influencing the pending proceeding.

Can an Official Return a Contribution of $500+ to Participate in a Proceeding?

Yes, but there is a limited time to do so. Once the Officer knows or should have known about a contribution and a proceeding, the Officer may return the contribution within 30 days and participate in the proceeding.

For example, if a contribution was received from a party before the Officer knew or had reason to know a proceeding involving the party had become pending, the Officer could return the contribution within 30 days of becoming aware of the contribution or proceeding.

For a contribution received from a participant before the Officer knew or had reason to know the participant had a financial interest in the proceeding, the Officer has 30 days from knowing about the contribution or the financial interest in the proceeding, whichever is later.

For Officers who serve on a legislative body and would otherwise be disqualified under the Levine Act from participating in a proceeding, the Officer may still participate before returning the contribution if all the following criteria are met:

1. The decision is made at a public meeting of the legislative body,
2. the Officer knew or should have known about the contribution and proceeding for less than 30 days,
3. after learning of the contribution or proceeding and prior to taking part in any further discussion or decision, the Officer discloses the fact of the disqualifying contribution on the record of the proceeding as required under the Levine Act and states that they will return the contribution within 30 days from the date the Officer knew or should have known about the contribution and proceeding, and
4. the contribution is in fact returned within that timeframe.

<u>CEQA APPROVAL GUIDELINES</u>

***Disclaimer*: These guidelines are provided for general information only and are not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in these materials.**

<u>CATEGORICAL EXEMPTIONS</u>

Categorically exempt projects are those the State has determined do not have a significant effect on the environment and which, therefore, shall be exempt from CEQA (CEQA Guidelines 15300). The table on Page 3 summarizes the exemptions (referred to as “classes”) and provides citations to the appropriate Guidelines sections. Many of the categories include special limitations and examples of exempt projects. Please refer to the Guidelines section for complete Guidelines language. Also, unlike statutory exemptions, categorical exemptions are subject to certain exceptions found in Guidelines Section 15300.2.

EXCEPTIONS TO CATEGORICAL EXEMPTIONS

Categorical exemptions cannot be used if any of the exceptions listed under CEQA Guidelines § 15300.2 are applicable. Exceptions include:

- Location in a sensitive environment as to Classes 3, 4, 5, 6 and 11.
- Cumulative impact. When the cumulative impact of successive projects of the same type in the same place, over time is significant.
- Significant effect due to unusual circumstances.
- Designated State scenic highways. Includes scenic resources such as trees, historic buildings, etc.
- Hazardous waste sites.
- Adverse change in the significance of a historical resource.

TEMPLATE FOR AGENDA TITLES

<u>Form</u>:

Actions pertaining to [*project*]:

1. Adopt a finding of Categorical Exemption pursuant to Section [*xxxxx (name of exemption)*] of the California Environmental Quality Act (CEQA) Guidelines
2. [*Project approval*]

<u>Example</u>:

Actions pertaining to the use of City Parking Garage:

1. Adopt a finding of Categorical Exemption pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines.
2. Approve the Second Amendment to the License Agreement between the City and XXXX, LLC., to license use of certain real property, together with access and utility rights located at the City Parking Garage.

TEMPLATE FOR STAFF REPORTS

Form:

ENVIRONMENTAL REVIEW

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Categorical Exemption set forth in [*identify code section*] which exempts [*describe the activity the exemption applies to*] because [*set forth facts why this exemption applies to the project.*] Furthermore, Staff has determined that none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project.

Example:

ENVIRONMENTAL REVIEW

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Class 1 Categorical Exemption set forth in CEQA Guidelines, section 15301(c), which exempts minor alteration of existing public facilities, because this contract is for the repair of existing sidewalks and gutters located on ABC Boulevard between 1th Street and 4th Street, which will not result in the expansion of capacity of ABC Boulevard. Furthermore, none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project.

See next page for a list of Categorical Exemptions.

CATEGORICAL		EXEMPTIONS
Class 1	Operation, repair, maintenance, or minor alteration of existing structures or facilities not expanding existing uses	15301
Class 2	Replacement or reconstruction of existing structures or facilities on the same site having substantially the same purpose and capacity	15302
Class 3	New construction of limited small new facilities; installation of small, new equipment and facilities in small structures; and conversion of the use of small existing structures (e.g., construction of three or fewer single-family homes in urban areas)	15303
Class 4	Minor alterations in the condition of the land, such as grading, gardening, and landscaping, that do not affect sensitive resources	15304
Class 5	Minor alterations to land use limitations, such as lot line adjustments, variances, and encroachment permits on land with a slope of less than 20%, that do not result in changes in land use or density	15305
Class 6	Basic data collection, research, experimental management, and resource evaluation activities that do not result in major disturbances to an environmental resource	15306
Class 7	Certain actions by regulatory agencies to maintain, restore, or enhance natural resources, other than construction activities, where the regulatory process includes procedures to protect the environment	15307
Class 8	Certain actions by regulatory agencies to maintain, restore, or enhance the environment, other than construction activities, where the regulatory process includes procedures to protect the environment	15308
Class 9	Inspections to check for the performance of an operation, or for quality, health, or safety of a project	15309
Class 10	Certain Department of Veterans Affairs loans and mortgages for purchases of certain existing structures	15310
Class 11	Construction or placement of minor structures accessory to existing facilities (e.g., signs, small parking lots, portable structures)	15311
Class 12	Sales of surplus government property, except in environmentally sensitive areas	15312
Class 13	Acquisition of land for fish and wildlife habitat conservation purposes	15313
Class 14	Minor additions to existing schools that do not increase capacity by more than 25%	15314
Class 15	Subdivision of certain properties in urban areas into four or fewer parcels	15315
Class 16	Certain acquisitions or sales of land in natural condition or containing cultural resource sites to establish a park	15316
Class 17	Establishment of agricultural preserves, making and renewal of Williamson Act contracts, and acceptance of open space property	15317
Class 18	Designation of wilderness areas under the California Wilderness System	15318
Class 19	Annexations of certain areas containing existing structures and certain small parcels	15319
Class 20	Local government reorganizations requiring no changes in the areas where previous powers were exercised, such as the establishment of subsidiary districts, consolidations, and mergers	15320
Class 21	Actions by regulatory agencies to enforce a lease, permit license, or other entitlement; actions by law enforcement officials	15321
Class 22	Actions related to educational or training programs involving no exterior physical changes	15322
Class 23	Normal operations of existing facilities for public gatherings for which the facilities were designed	15323
Class 24	Actions taken by regulatory agencies related to wages, hours, and working conditions	15324
Class 25	Transfers of interest in land to preserve open space	15325
Class 26	Actions needed to implement a housing assistance plan by acquiring an interest in housing units	15326
Class 27	Leasing of new or unoccupied private facilities in a building exempt from CEQA	15327
Class 28	Installations of certain hydroelectric facilities of less than 5 megawatts capacity at existing facilities	15328
Class 29	Installation of certain cogeneration equipment of less than 50 megawatts capacity at existing facilities	15329
Class 30	Minor actions to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of hazardous waste or substances	15330
Class 31	Historical resource restoration or rehabilitation consistent with Secretary of Interior guidelines	15331
Class 32	Certain in-fill development projects in urban areas	15332

COMMON SENSE EXEMPTION

The Common Sense exemption is applicable "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines § 15061(b)(3).)

Even if City Staff has determined that the project is not covered by either a statutory or categorical exemption, Staff may nevertheless dispense with CEQA review if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. As a best practice, the use of this approach should be limited to when it is absolutely clear that there could not possibly be any environmental effects from the project the being approved.

TEMPLATE FOR AGENDA TITLES

Form:

Actions pertaining to [*project*]:

1. Adopt a finding of Exemption pursuant to Section 15061(b)(3) (Common Sense Exemption) of the California Environmental Quality Act (CEQA) Guidelines.

2. [*Project approval*]

Example:

Actions pertaining to acquisition of pedestrian easement:

1. Adopt a finding of Exemption pursuant to Section 15061(b)(3) (Common Sense Exemption) of the California Environmental Quality Act (CEQA) Guidelines.

2. Approve purchase of 120-foot pedestrian easement at 1234 Main Street from AB Smith, Inc.

TEMPLATE FOR STAFF REPORTS

Form:

ENVIRONMENTAL REVIEW

Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, section 15061(b)(3), has determined with certainty that there is no possibility that this project may have a significant effect on the environment. This is because [*include facts to support this conclusion*.] Therefore, this project is not subject to CEQA.

Example:

ENVIRONMENTAL REVIEW

Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, section 15061(b)(3), has determined with certainty that there is no possibility that this project may have a significant effect on the environment. This is because this agreement is to acquire a six foot by twenty foot easement to allow for the connection of sidewalk segments currently separated by dirt. Therefore, this project is not subject to CEQA.

STATUTORY EXEMPTIONS

The Legislature has enacted a variety of statutory exemptions from CEQA. Statutory exemptions provide "an escape from the EIR requirement despite a project's clear, significant impact." (*West. Mun. Water Dist. of Riverside Cnty v. Sup. Ct. of San Bernardino Cnty* (1986) 187 Cal.App.3d 1104.) Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance. (CEQA Guidelines § 15260.) Statutory exemptions are located in CEQA Guidelines sections 15260-15282:

15261	Ongoing Project
15262	Feasibility and Planning Studies
15263	Discharge Requirements
15264	Timberland Preserves
15265	Adoption of Coastal Plans and Programs
15266	General Plan Time Extension
15267	Financial Assistance to Low or Moderate Income Housing
15268	Ministerial Projects
15269	Emergency Projects
15270	Projects Which are Disapproved
15271	Early Activities Related to Thermal Power Plants
15272	Olympic Games
15273	Rates, Tolls, Fares, and Charges
15274	Family Day Care Homes
15275	Specified Mass Transit Projects
15276	Transportation Improvement and Congestion Management Programs
15277	Projects Located Outside California
15278	Application of Coatings
15279	[deleted]
15280	[deleted]
15281	Air Quality Permits
15282	Other Statutory Exemptions
15283	Housing Needs Allocation
15284	Pipelines
15285	Transit Agency Response to Revenue Shortfalls

**SB 131, signed June 30, 2025, adds new statutory exemptions for specific project types.

TEMPLATE FOR AGENDA TITLES

Form:

Actions pertaining to [*project*]:

1. Adopt a finding of Statutory Exemption pursuant to Section [*xxxxx (name of exemption)*] of the California Environmental Quality Act (CEQA) Guidelines.
2. [*Project approval*]

Example:

Actions pertaining to the emergency repair of the wastewater treatment plant:

1. Adopt a finding of Statutory Exemption pursuant to Section 15269 (Emergency Repairs) of the California Environmental Quality Act (CEQA) Guidelines.
2. Approve an Agreement with Demo Corp., for the demolition of the building at 123 Main Street.

TEMPLATE FOR STAFF REPORTS

Form:

ENVIRONMENTAL REVIEW

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Statutory Exemption set forth in [*identify code section*] which exempts [*describe the activity the exemption applies to*] because [*set forth facts why this exemption applies to the project.*]

Example:

ENVIRONMENTAL REVIEW

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Statutory Exemption set forth in CEQA Guidelines, section 15269(b), which exempts emergency demolitions necessary to preserve public health, safety, and welfare, because this contract is for the demolition of a building partially destroyed by fire that is unstable and likely to collapse, creating an imminent threat to the public of bodily harm and damage to adjacent property.

SPECIAL SITUATIONS

There are special rules and processes for certain classes of projects, and CEQA allows for a streamlined review process in some circumstances.

15182	Projects pursuant to a Specific Plan
15183	Projects consistent with a community plan or zoning
15183.3	Streamlining for infill projects
15183.5	Tiering and streamlining the analysis of greenhouse gas emissions
15184	State mandated local projects
15185	Administrative appeals

15186	School facilities
15187	Environmental review of new rules and regulations
15191-15196	Exemptions for agricultural housing, affordable housing, and residential infill projects
SB 288	Sustainable Transportation Projects

PROJECTS THAT HAVE BEEN PREVIOUSLY ASSESSED

When a project has been previously assessed, you do not need to add anything to the agenda title, but the staff report should reference the previous assessment.

TEMPLATE FOR STAFF REPORT

If previous finding was an exemption:

A Finding of a Class [*x*] Categorical Exemption pursuant to CEQA Guidelines section [*xxxxx*] was adopted by Council on May 1, 2022, for [*insert brief description of total project*.] A Notice of Exemption was filed on [*date*]. [*Brief description of this current approval*] was included in the project description for the findings of Categorical Exemption. Therefore, all necessary environmental review required by CEQA has been completed.

If previous environmental document was an EIR, MND, or addendum:

[*Identify EA, including the number*] was prepared for [*identify project*]. It was adopted on [*insert date*]. [*Briefly describe the project that was analyzed in the previous environmental document. You may just copy the project description from the previous environmental document*.] This approval is to implement a portion of that project.

An analysis has been performed pursuant CEQA Guidelines § 15162 to determine whether subsequent environmental review is required for [*project name here*]. Based upon this analysis the following findings are made to support the determination that no subsequent environmental review is required:

1. No substantial changes are proposed in the project which will require major revisions of the previous [addendum] due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, [*explain any minor changes. If there are no changes to the project, state that here*.]

2. No substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, [*include facts that no substantial changes have occurred*.]

3. There is no new information, which was not known and could not have been known at the time of the previous addendum that the project will have significant effect not discussed in the addendum

Based upon these findings, it has been determined that no further environmental documentation is required for this project.

OTHER ENVIRONMENTAL DOCUMENTS (Neg Dec, MND, EIR, etc.)

If a project is not exempt under CEQA, it will require further CEQA review, resulting in product of a Negative Declaration, Mitigated Negative Declaration, EIR, or other environmental document. These documents will require coordination with City staff to ensure all substantive and procedural requirements (including noticing and circulation for comment) are met prior to placing the project and required environmental documents on the agenda. Depending on the structure of planning review, Planning Commissions may or may not have the authority to approve environmental documents, so it is important to ensure that process is also examined prior to placement on the agenda.

Staff report preparation will require placing all pertinent facts into the record, including demonstration of compliance with all procedural requirements, and an explanation of any necessary mitigation, or reasoning for overriding considerations in the event the EIR determines that the project will result in significant and unavoidable adverse impacts.

Script for Warnings

1) When the initial disruption happens, Chair warns the speaker/audience member:

"You are disrupting the meeting by [describe conduct, i.e., exceeding the allotted time to speak, or using such excessive profanity that we cannot continue the meeting, or speaking without being recognized by this body, or making threats against myself or staff or the other Council members, etc.], and I am asking that you stop."

2) Allow the speaker/audience member a legitimate opportunity to correct the behavior. [Note: in most cases, even seemingly egregious public comments will fall into the category of "annoying" or "profane," rather than truly disruptive, and will not warrant removal. The first warning, above, gives the person a fair chance to cease their conduct or risk being found disruptive so that removal is warranted].

3) If the conduct continues:

"You have continued to be disruptive despite my initial warning, and [your microphone will now be muted] or [you may be asked to leave the meeting for violating the City's rules of conduct for public meetings.]"

[Note: here is where City Muni Code, Rules of Decorum and SB 1100 come in handy as far as authority to fall back on when there is truly disruptive behavior warranting a muted mic/removal from the meeting.]

4) Allow speaker/audience member a legitimate opportunity to correct their behavior.

Recommend Taking A Recess to talk with the individual or strategize with Chair

5) If the conduct continues, despite having muted their microphone and/or given multiple warnings and/or taken a recess, give the following order:

"You have continued to disrupt this meeting, in violation of City Municipal Code section INSERT, Rules of Decorum Section INSERT and state law, and you are ordered to leave this meeting."

6) Do not resume with the meeting until the disruption has ended; preferably, wait until the individual has been removed.