

## **Citizens Watchdog Committee Meeting Agenda**

**Monday, January 10, 2011**

**1333 Broadway, Suite 300, Oakland, CA 94612**

**\*\*NOTE: EARLIER TIME FOR AUDIT AND COMPLIANCE REVIEW\*\***

**5:30 to 6:30 p.m. – Audit and Compliance Report Review**

**6:30 to 8:30 p.m. – Regular CWC Meeting**

**Meeting Outcomes:**

- Review audit and compliance reports
- Receive an update on projects, programs, financials, and contracting procedures
- Receive an update on the Countywide Transportation Plan and Transportation Expenditure Plan development (CWTP-TEP)
- Receive Committee Leadership Training

5:30 – 6:30 p.m.	<b>1. Audit and Compliance Report Review</b>	I
	<u>01 Audit and Compliance Report Summary.pdf</u> – Page 1	
6:30 – 6:35 p.m.	<b>2. Welcome to CWC Meeting, and Introductions</b>	
6:35 – 6:40 p.m.	<b>3. Public Comment</b>	I
6:40 – 6:45 p.m.	<b>4. Approval of November 8, 2010 Minutes</b>	A
	<u>04 CWC Meeting Minutes 110810.pdf</u> – Page 3	
	<u>04A CWC Ad-hoc Committee Minutes 110310.pdf</u> – Page 9	
6:45 – 7:00 p.m.	<b>5. Countywide Transportation Plan and Transportation Expenditure Plan Development Update</b>	I
	<u>05 Memo Regional SCS/RTP CWTP-TEP Process.pdf</u> – Page 33	
	<u>05A CWTP-TEP-SCS Development Impl Schedule.pdf</u> – Page 37	
	<u>05B ABAG Staff Report on SCS.pdf</u> – Page 41	
	<u>05C SCS Schedule.pdf</u> – Page 49	
	<u>05D CAWG and TAWG Rosters.pdf</u> – Page 53	
	<u>05E CWTP-TEP Planning Webpage.pdf</u> – Page 59	
7:00 – 7:05 p.m.	<b>6. CWC Member Reports/Issues Identification</b>	I
	<u>06 CWC Issues Identification Form.pdf</u> – Page 61	

- 7:05 – 8:20 p.m.      **7. Committee Leadership Training**  
                                 07A Brown Act Guide.pdf – Page 63  
                                 07B Brown Act Amendment Brief 2008.pdf – Page 115

*Additional materials will be handed out during the training.*

- 8:20 – 8:30 p.m.      **8. Staff Reports/Board Actions** |  
                                 **A. General Items**  
                                 08A Alameda CTC Action Items.pdf – Page 117  
                                 08A1 CWC Calendar.pdf – Page 123  
                                 08A2 CWC Roster.pdf – Page 125

- 8:30 p.m.              **9. Adjournment**

*Key: A – Action Item; I – Information/Discussion Item; full packet available at [www.alamedactc.org](http://www.alamedactc.org)*

**Next Meeting:**

Date:            March 14, 2011

Time:           6:30 to 8:30 p.m.

Location:      Alameda CTC Offices, 1333 Broadway, Suite 300, Oakland, CA 94612

**Staff Liaisons**

Tess Lengyel, Programs and Public Affairs Manager, (510) 267-6111, [tlengyel@actia2022.com](mailto:tlengyel@actia2022.com)

Anees Azad, Finance and Administration Manager, (510) 267-6101, [aazad@actia2022.com](mailto:aazad@actia2022.com)

Angie Ayers, Program Management Team, (510) 267-6115, [aayers@actia2022.com](mailto:aayers@actia2022.com)

**Location Information:** Alameda CTC is located in Downtown Oakland at the intersection of 14<sup>th</sup> Street and Broadway. The office is just a few steps away from the City Center/12<sup>th</sup> Street BART station. Bicycle parking is available inside the building, and in electronic lockers at 14<sup>th</sup> and Broadway near Frank Ogawa Plaza (requires purchase of key card from [bikelink.org](http://bikelink.org)). There is garage parking for autos and bicycles in the City Center Garage (enter on 14<sup>th</sup> Street between Broadway and Clay). Visit the Alameda CTC website for more information on how to get to the Alameda CTC: <http://www.alamedactc.com/directions.html>.

**Public Comment:** Members of the public may address the committee regarding any item, including an item not on the agenda. All items on the agenda are subject to action and/or change by the committee. The chair may change the order of items.

**Accommodations/Accessibility:** Meetings are wheelchair accessible. Please do not wear scented products so that individuals with environmental sensitivities may attend. Call (510) 893-3347 (Voice) or (510) 834-6754 (TTD) five days in advance to request a sign-language interpreter.

## END-OF-YEAR PROGRAM COMPLIANCE INTAKE SHEET

### FISCAL YEAR 2009 - 2010

AGENCY/JURISDICTION	Sender	Signee (if other than sender)	Item Received: Audit (DUE 12/27/10) or Compliance (incl. Table 1) (DUE 12/31/10)	Date Hard Copy Rec'd	Date Electronic Copy Rec'd
<b>TRANSIT AGENCIES</b>					
Alameda-Contra Costa Transit District	Barbara Daniels		Audit	12/23/2010	12/23/2010
Alameda-Contra Costa Transit District	Barbara Daniels	Mary V. King	Compliance	12/30/2010	12/30/2010
Bay Area Rapid Transit	Christopher Gan		Audit	12/29/2010	12/23/2010
Bay Area Rapid Transit	Laura Timothy		Compliance	12/30/2010	12/28/2010
Livermore Amador Valley Transit Authority	Beverly Adamo	Paul Matsuoka	Audit	11/15/2010	Downloaded from website
Livermore Amador Valley Transit Authority	Tamara Edwards	Paul Matsuoka	Compliance	10/11/2010	11/17/2010
<b>ALAMEDA COUNTY AGENCIES</b>					
Alameda County Public Works Agency	Fifi Ngom		Audit	12/23/2010	12/23/2010
Alameda County Public Works Agency	James Chu	William Lepere	Compliance	12/29/2010	12/29/2010
Altamont Commuter Express	Margaret Merin		Audit	12/28/2010	12/27/2010
Altamont Commuter Express			Compliance		1/4/2011
<b>CITY AGENCIES</b>					
City of Alameda (with Ferries)			Audit	12/23/2010	
City of Alameda (with Ferries)			Compliance	12/23/2010	
City of Albany			<b>Audit</b>		
City of Albany			Compliance	12/23/2010	12/21/2010
City of Berkeley	Peggy Kiriara		Audit	12/28/2010	12/27/2010
City of Berkeley	Peggy Kiriara		Compliance	12/28/2010	12/27/2010
City of Dublin	Nicole Gonzales		Audit	12/23/2010	12/21/2010
City of Dublin	Nicole Gonzales		Compliance	12/23/2010	12/21/2010
City of Emeryville	Karan Reid		Audit	12/20/2010	12/15/2010
City of Emeryville	Karan Reid		Compliance	12/20/2010	12/15/2010
City of Fremont	Deepak Sharma		Audit	12/29/2010	12/27/2010
City of Fremont	Tish Saini	Fred Diaz	Compliance	12/29/2010	12/27/2010
City of Hayward	Todd Strojny	Fran David	Audit	12/21/2010	12/21/2010
City of Hayward	Todd Strojny	Fran David	Compliance	12/21/2010	12/21/2010
City of Livermore			<b>Audit</b>		
City of Livermore	Michael Irby	Linda Barton	Compliance	12/22/2010	12/21/2010
City of Newark	Teresa Francisco		Audit	12/23/2010	12/22/2010
City of Newark	Soren Fajeau - <i>resent 12/22</i>	John Becker	Compliance	12/23/2010	12/20/2010
City of Oakland	Ming Emperador		Audit	12/23/2010	12/23/2010
City of Oakland			Compliance	12/30/2010	12/30/2010
City of Piedmont	Ken Lee		Audit	12/20/2010	12/15/2010
City of Piedmont	Geoff Grote		Compliance	12/20/2010	
City of Pleasanton	Diane Punzo		Audit	12/28/2010	12/27/2010
City of Pleasanton	Juan Gomez		Compliance	12/30/2010	12/28/2010
City of San Leandro	Carla Rodriguez		Audit	12/23/2010	12/22/2010
City of San Leandro	Carla Rodriguez		Compliance	12/23/2010	12/22/2010
City of Union City/Union City Transit			Audit	1/3/2011	1/4/2011
City of Union City/Union City Transit	Wilson Lee		Compliance	12/20/2010	12/17/2010

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**Alameda CTC Citizens Watchdog Committee Meeting Minutes**  
**Monday, November 8, 2010, 6:30 p.m., 1333 Broadway, Suite 300, Oakland**

Attendance Key (A = Absent, P = Present)

**Members:**

<u>P</u> James Paxson, Chair	<u>A</u> Arthur Geen	<u>A</u> Dave Stark
<u>P</u> Jo Ann Lew, Vice Chair	<u>A</u> James Haussener	<u>A</u> George Zika
<u>P</u> Pamela Belchamber	<u>P</u> Miriam Hawley	<u>P</u> Hale Zukas
<u>P</u> Roger Chavarin	<u>A</u> Erik Jensen	
<u>P</u> Mike Dubinsky	<u>A</u> Melody Marr	
<u>A</u> Thomas Gallagher	<u>P</u> Harriette Saunders	

**Staff:**

<u>P</u> Arthur L. Dao, Executive Director	<u>P</u> Tess Lengyel, Programs and Public Affairs Manager
<u>P</u> Anees Azad, Finance and Administration Manager	<u>P</u> Angie Ayers, Acumen Building Enterprise, Inc.

**1. Welcome and Introductions**

James Paxson, CWC Chair, called the meeting to order at 6:35 p.m. and welcomed the new members Mike Dubinsky and Miriam Hawley.

**2. Public Comments**

There were no public comments.

**3. Approval of July 12, 2010 Minutes**

*Pamela Belchamber moved to approve the minutes. Roger Chavarin seconded the motion. The motion carried with one abstention, Miriam Hawley (7-1).*

**4. ACTIA Independent Audit Presentation**

Mark Wong from the independent auditing firm of Maze and Associates, LLP presented ACTIA's audit report for fiscal year 2009-2010. The auditors reviewed ACTIA's internal operating controls, systems, and processes, as well as the accuracy and reliability of its financial records. Mr. Wong reviewed the draft basic financial statements, ACTIA single audit financial statements, and the limitations worksheet.

- Regarding the report of ACTIA's financial statements, the auditor found no material weaknesses or items of administrative concern, and Maze and Associates issued a "clean" or "unqualified" opinion, meaning that the information stated is materially accurate.
- The single audit was required for transactions involving federal funds of more than \$500,000. Federal State Transportation Improvement Program (STIP) and Surface Transportation Program (STP) funds in the amount of \$823,000 were used for the I-580/Redwood Road Interchange and I-580 Castro Valley Interchange Improvement projects.
- Anees Azad reviewed the limitations worksheet in detail.

Anees stated that the Expenditure Plan mandates that the staff salary and benefits must be 1 percent below the revenue net. It also requires that other administrative costs are less than 4.5 percent of the sales tax revenue. Anees mentioned that this is the first year for the new cost allocation policy, which separates administrative costs into direct and indirect costs. This is also the first time for the ratio of indirect and direct costs.

CWC members made the following inquiries:

- The financial highlights show \$26.1 million for local transportation. Does this also include funds for paratransit? Staff stated that the paratransit costs are in mass transit. Local transportation is for local streets and roads for jurisdictions.
- On the balance sheets/statement of net assets, it appears that a portion of the reserves are for the Countywide Transportation Plan (CWTP). Staff explained that the total CWTP effort will cost \$2 million, and the \$1 million shown on the balance sheet is the amount that the Alameda County Transportation Improvement Authority (ACTIA) is matching with the Alameda County Congestion Management Agency (ACCMA).
- Why is Measure B money being used to plan for another set of projects in the CWTP? Staff explained that Alameda CTC is using a mix of fund sources, such as the Bicycle and Pedestrian Safety funds used to update the Countywide Bicycle and Pedestrian Plans (that will also feed into the CWTP); the Congestion Emergency Relief fund; the Express Bus fund for use in the transit section of the CWTP; and the unused portion of the 4.5 percent of sales tax revenue for administrative costs.
- When was the transfer of ACTA to ACTIA? The transfer took place on June 24, 2010.
- Is the date correct for the indirect costs on the limitations worksheet? Yes.
- How are the retirement plans funded? Are the retirement plans covered under the administrative expense? Yes.

## **5. Discussion of Amendment to 2000 Measure B Expenditure Plan**

Matt Todd discussed the I-80 Integrated Corridor Mobility Project/San Pablo Avenue Arterial and Transit Improvement Project with the CWC. He informed members that a request to allocate additional funds and amend the professional services agreement for this project will go to the Commission in December.

Staff informed the CWC of an emergency contingency fund, which is part of the Expenditure Plan, and is available to fund high-priority projects that address major regional congestion problems that emerge during the life of the plan. The Congestion Relief Emergency fund contains \$7.6 million, and Alameda CTC wants to use a portion of the funds for a project that will relieve congestion on I-880 at 29<sup>th</sup> and 23<sup>rd</sup> Avenue. This project will tear down the overcrossing, which is a major route for trucks. Replacing the overcrossing will improve the congestion in 12 lanes and provide longer ramp and auxiliary lanes. To use the Congestion Relief Emergency fund, the project must meet three criteria as follows: (1) high priority; (2) high congestion; (3) new project emerged during the life of the Expenditure Plan.

*JoAnn Lew made an expression of support for the project. Harriette Saunders seconded the motion. The motion passed unanimously (8-0).*

## **6. CWC Annual Report Outreach Summary**

### **A. Summary of Costs**

Tess Lengyel stated that a different approach was taken this year for the CWC Annual Report to the public. Staff placed more ads online to redirect traffic back to the website to the full online report and placed fewer print advertisements. The budget for the Annual Report was \$50,000 and the actual cost was \$44,973. The CWC inquired how many hits occurred on the website for the annual report. Staff will bring that information to the next meeting.

### **B. Summary of Feedback**

Staff stated that one complaint received was that the font was too small in the *Pleasanton Weekly* paper. All other responses were positive.

## **7. Program Compliance Workshop Update**

Tess Lengyel informed the CWC members that Alameda CTC held a Programs Compliance Workshop on September 16, 2010. A total of 23 people attended, which included representatives from cities and agencies. Staff stated that program compliance materials are on the website, and Alameda CTC is aiming for 100 percent compliance. If an agency is not in compliance, Alameda CTC can withhold funds. At the next workshop, staff will discourage the cities from using "see attached" and have them expand their answers on the forms.

## **8. CWC Member Reports/Issues Identification and Report from CWC Ad-hoc Committee Meeting**

James Paxson gave an overview of the Issues Identification process and explained that an Ad-hoc Committee is formed once the CWC identifies an issue. The CWC reviewed the CWC Ad-hoc Committee recommendation regarding the City of Fremont and the City of Oakland ending balances for fiscal year 2008-2009.

The Ad-hoc Committee recommendations to the CWC are:

1. Should there be a cap on the amount of money an agency has for an ending balance? The Paratransit Advisory and Planning Committee (PAPCO) currently has a cap in place on how cities deal with reserves, and is a model that can be used for Bicycle and Pedestrian Safety, and Local Streets and Roads programs. PAPCO has a time period for cities to spend down their money for the paratransit program. How should the agreements help to direct those funds? Arthur L. Dao stated that policy decisions will be brought to the Commission at the Retreat on December 17.

Should Alameda CTC put more aggressive measures in place to enforce Measure B expenditures? Staff stated that when Alameda CTC works with the jurisdiction

- agreements, staff can bring them to the CWC for review; and Alameda CTC staff will bring potential policy decisions to the Commission Retreat in December.
2. The CWC should request more project reporting at the CWC meetings annually with the jurisdictions to help the cities focus on their delivery processes and expenditures.
  3. Alameda CTC can modify the program compliance spreadsheet by allowing the jurisdictions to provide more detail.

*The CWC members agreed by consensus to send a message to the Commission to review and comment on next year's policy development in preparation for the 2012 agreements. The members also want to adopt items 2 and 3 of the CWC Ad-hoc Committee recommendations at the earliest possible time.*

The CWC members stated that they would like greater transparency and to make the reporting requirements clearer rather than tackle the policy of when people should spend money. The cities need to disclose to the public how and when they spend the money.

## **9. Staff Reports/Commission Actions**

### **A. Merger Update**

Due to time constraints, this topic was not covered.

### **B. Semi-Annual Local Business Enterprise/Small Local Business Enterprise Report (LBE/SLBE) Update**

Arun Goel presented to the CWC members the LBE/SLBE utilization report for the period of January 1, 2010 to June 30, 2010. During this period, ACTIA had 31 active contracts with Local Business Contract Equity (LBCE) Program goals.

Staff monitors the goals and achievements of each contract. ACTIA reserves the right to audit the activities of the contracting organizations to ensure they use the funds as specified. The purpose of the semi-annual ACTIA Board report is to ensure staff enforces the guidance established by the ACTIA Board.

ACTIA also participates with the Disadvantage Business Enterprise Program, which includes minority-owned and woman-owned business enterprises.

The Semi-Annual LBE/SLBE [Local Business Enterprise/Small Local Business Enterprise] report indicated that through June 30, 2010, on all active projects, 92 percent of funds went to LBE certified firms, and 52 percent went to SLBEs.



**C. General Items**

- Tess Lengyel highlighted items in the Commission Action Items report.
- Robert Raburn was elected as BART Board of Director for District 4 in November 2010.
- A Commission Retreat will take place on December 17, 2010.
- The City of Union City put a half-cent sales tax measure on the ballot, and it passed; the City of San Leandro put a quarter-cent sales tax measure on the ballot, and it passed; the CMA's Measure F also passed.

**10. Adjournment/Next Meeting**

The meeting adjourned at 9 p.m.

The next meeting is January 10, 2011 at Alameda CTC offices. **Please note: To allow for review of the Year-end Program Compliance Reports and Audits, the meeting will begin one hour earlier at 5:30 p.m.**

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**Citizens Watchdog Committee Ad-hoc Committee Meeting Minutes**  
**Wednesday, November 3, 2010, 3 p.m., 1333 Broadway, Suite 300, Oakland**

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Attendance Key (A = Absent, P = Present)

Ad-hoc Committee Members:

  P   James Paxson, Chair                        P   James Haussener  
  P   Jo Ann Lew, Vice Chair

Staff:

  A   Arthur L. Dao, Executive Director                        P   Tess Lengyel, Programs and Public Affairs Manager  
  P   Anees Azad, Finance and Administration Manager                        P   Angie Ayers, Acumen Building Enterprise, Inc.

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**1. Welcome and Introductions**

James Paxson, CWC Chair, called the meeting to order at 3:05 p.m. and explained the desired outcome of the meeting.

***Guests Present:** City of Fremont: Rene Dalton, Associate Transportation Engineer; Norm Hughes, City Engineer; City of Oakland: Mike Neary, Deputy Director of Public Works Agency; Bruce Williams, Senior Transportation Planner; and Wladimir Wlassowsky, Civil Principal Engineer*

**2. Overview of CWC Ad-hoc Committee Process**

Staff and the CWC Chair explained the CWC Ad-hoc Committee process. The CWC may establish an ad-hoc committee to conduct an investigation and/or review Measure B expenditures; the role of the citizens' oversight committee is written into the Expenditure Plan.

**3. City of Fremont Presentation**

The City of Fremont staff explained that the City had been a recipient of stimulus funds and Measure B funds for Local Streets and Roads. The City has tried to spend the stimulus funds first, since Measure B funds do not have the same constraints as federal funds. The ending balance for Measure B Bicycle and Pedestrian Safety and Local Streets and Roads funds was \$1.9 million for fiscal year 2008-2009.

The City of Fremont provided handouts and explained that it has three categories of projects as follows:

- **Category 1 – Uncompleted Projects:** Typically, the City completes projects within two to three years. Four projects in this category are associated with the \$1.9 million reserves listed in the CWC issues form:
  - The Central Park Gomes Park Union Pacific Railroad (UPRR) Pedestrian Crossing Project was delayed due to UPRR and the California Public Utilities

Commission permitting process. This project was first funded in 2003 and will be complete by September 2011.

- The School Traffic Safety Program was first funded in 2005, and preliminary engineering analysis is ongoing for this project. The project is scheduled to be complete by December 2012
- The Mission Blvd Sidewalk/Street Improvements (I-680 to Mission Creek) Project is delayed due to higher-priority projects. This project was first funded in 2007 and is scheduled to be complete by August 2012.
- The Pedestrian Accessibility Improvements Project is on schedule and is 50 percent complete. However, the City plans to use the reserves from this project for Americans with Disabilities Act (ADA) issues.

The CWC Ad-hoc Committee noted that once the Category 1 projects are complete, the \$1.9 million will be reduced dramatically.

- **Category 2 – Ongoing Projects:** Two capital projects, the East-West Connector and the BART Warm Springs Extension, pay staff support out of Local Streets and Roads funds. Four Measure B projects received state grant funds, Proposition 42 funds, and Proposition 1B funds. The City spent the funds from the other sources first, which left remaining balances for Measure B funds.
- **Category 3 – Completed Projects:** These are shown in Attachment A.

#### 4. CWC Member Questions and Answers for City of Fremont

The following inquiries were made by the CWC members:

- On the Local Streets and Roads projects, if projects get other funding, how do you use the Measure B funds? The City of Fremont staff replied that they would use the funds on Congestion Management Programs (CMPs).
- For delayed Bicycle and Pedestrian Safety projects, do they still incur administrative costs? The City of Fremont replied that some salaries are charged as overhead. Administrative time/cost is not charged if the project is delayed. However, the City receives interest when projects are delayed, and uses that for the project.
- Do you have a five-year Capital Improvement Program (CIP)? Yes. More detailed planning occurs the first two years of a five-year CIP. The third, fourth, and fifth years are for planning regarding anticipated funding, which the City looks at every two years.

#### 5. Next Steps for the City of Fremont

The CWC Ad-hoc Committee made a determination that the City of Fremont does not require additional follow up. The Committee was satisfied with the explanation that the City provided.

#### 6. City of Oakland Presentation

The City of Oakland staff explained that the City revenues increased faster than expected due to a booming economy at the beginning of the decade, and that similar to the City of

Fremont, some projects were funded with other sources, such as the American Reinvestment and Recovery Act (ARRA) funds, which have specific spend-down deadlines. Staff also discussed how the Current Capital Improvement Program (CIP) works, whereby design and construction funds are appropriated for a project in a single year; however, the actual construction will take place in a later year than appropriated, leaving a fund balance. The City of Oakland is in the process of modifying its CIP policy to be more in alignment with project development stages and funding needs. The City of Oakland staff also explained how they appropriate funds and the draw-down period that will occur over the next few years, as shown on Attachment B. The handouts show how the funds will be depleted by 2014.

Oakland staff stated that they are moving to a better approach for project delivery. They are creating an on-call team of contractors that will reduce the project delivery time.

#### **7. CWC Member Questions and Answers for City of Oakland**

- Are there unmet needs so that the City can use the money instead of keeping it in the bank? How is the City spending the money down? The City of Oakland explained that when the money is looked at from a budget point of view, the large balances do not show versus a snapshot in a point in time that can reflect large balances. The City also explained that the large balance is a red flag to the department. The City does not want to spend everything appropriated at one time. Last year, for example, the audit showed \$13 million; however \$11 million was appropriated and will not be spent in the year appropriated.
- The CWC stated that the public may have issues with the large amount that is maintained by the City. Something more needs to be put in the audit report to explain the Measure B fund amount. Alameda CTC stated that the City of Oakland can add more of a description when reporting to the Alameda CTC.
- How does the City of Oakland break down non-project expenses? The City stated that personnel and material costs are related to operations and maintenance, which are spent annually.

#### **8. Next Steps for the City of Oakland**

The City of Oakland showed how the funds will be depleted by 2014. Also, the City will provide more detail on the audit reports to explain how the City appropriated the funds and when it will spend the funds.

#### **9. CWC Ad-hoc Committee Recommendation to Full CWC**

The CWC Ad-hoc Committee was satisfied with the verbal explanations and handout materials given by the City of Fremont and City of Oakland staff. The Ad-hoc Committee considerations and recommendations to the CWC are as follows:

1. Should there be a cap on the amount of money an agency has for an ending balance? Should Alameda CTC put more aggressive measures in place to enforce Measure B expenditures?

2. The CWC should request more project reporting at the CWC meetings annually with the jurisdictions to help the cities to focus on their delivery processes and expenditures.
3. Alameda CTC can modify the program compliance spreadsheet by allowing the jurisdictions to provide more detail instead of putting information under the other category. For example, the form could have other options so the City of Oakland's \$5.7 million in administrative costs that went under the other category, could include more detailed information.

#### **10. Adjournment**

The meeting adjourned at 5 p.m.

## Category 1: Uncompleted Projects

PWC #	Project Name	Project Description	First Funded	Estimated Project Completion	Total Project Cost	Total Measure B Funds Appropriated	Remaining Balance as of 6/30/10	Status/Next Steps
1	8709 Central Park Gomes Park UPRR Ped Crossing	Project involves construction of at-grade pedestrian, bicycle and service vehicle railroad crossing at UPRR/Mission Creek junction. The crossing will provide safe railroad crossing across UPRR tracks and provide public trail connection between Gomes Park and Central Park.	7/03	9/11	\$640,000	\$540,000	\$508,000	Project Delayed due to UPRR & CPUC permitting process. UPRR & CPUC supports the project but initially UPRR did not support the project which resulted in extended delays throughout the history of the project. Project plans at 90% complete and Environmental study complete. Next steps is to complete design, submit CPUC application for at-grade pedestrian crossing and process construction and maintenance agreement with UPRR.
2	8617 UPRR Corridor Trail Feasibility Study	Feasibility study for a proposed bicycle and pedestrian trail along an abandoned UPRR corridor between Niles District/Clarke Drive/UPRR junction to Milpitas/Fremont border (9 miles total).	7/05	N/A	\$140,000	\$140,000	\$20,000	Feasibility study completed. Remaining funds to be used for staff time in pursuing grant funds and preliminary engineering for Segments 1 of 2 of trail.
3	8617 School Traffic Safety Program	Develop projects to install speed humps at residential streets fronting elementary schools and to upgrade and relocate the City's radar feedback signs to residential streets frontage elementary schools.	7/05	12/12	\$280,000	\$280,000	\$272,000	Preliminary engineering analysis ongoing for 15 street segments. Next steps is to complete analysis and obtain neighborhood support for project before installation of speed humps.
4	8663 Mission Blvd. Sidewalk/Street Improvements (I-680 to Mission Creek)	Project involves installation of new sidewalk, curb ramps and bicycle lanes on Mission Boulevard between I-680 to Mission Creek.	7/07	8/12	\$565,000	\$415,000	\$413,000	Project Delayed due to road re-surfacing stimulus grant fund projects of higher priority this project was put on hold. Preliminary engineering underway. Project was appropriated funds in 2 separate increments. In 2008, the second increment of \$315,000 of Measure B funds was appropriated. Tentative construction completion date of August 2012 is scheduled.

**City of Fremont Measure B Bicycle Pedestrian Projects/Program Status Report as of June 30, 2010**

	PWC #	Project Name	Project Description	First Funded	Estimated Project Completion	Total Project Cost	Total Measure B Funds Appropriated	Remaining Balance as of 6/30/10	Status/Next Steps
5	8664 & 8691	Mission Boulevard Sidewalk & Driscoll Road Intersection Ped Signal Upgrade	This project involves construction of 1000' of new sidewalk on Mission Boulevard south of Driscoll Road in the vicinity of Mission San Jose HS and Hopkins Jr. Hi. Measure B funds appropriated towards this project is used to supplement Safe Routes to School Grant funds local match for Safe Routes to School Grant. Safe Routes to School grant of \$218,340 received by City.	7/08	12/10		\$184,000	\$157,000	Project is on schedule. Project under construction and 70% complete. Project estimated to be completed 12/10.
6	8667	Pedestrian Accessibility Improvements Project	This project involves construction of pedestrian facilities such as ADA curb ramps and other City projects identified by staff or the public.	7/07	12/12	\$220,000	\$220,000	\$110,000	Project is on schedule. 50% of project complete. Remaining funds will be appropriated in the next two fiscal years for pedestrian facilities project.
7	8669	Walnut Avenue/Argonaut Way Lane Reduction	Project involves new roundabout at Walnut/Argonaut Parkhurst, road diet from 4 lanes to 2 lanes, on-street parking and retaining bike lanes. HSIP grant of \$517,680 received for project. Measure B funds appropriated for this project is for traffic study and local match for HSIP Grant fund received.	7/07	9/12	\$645,000	\$120,000	\$68,000	Project is on schedule. Traffic study completed. Waiting for Caltrans Federal Authorization to proceed with project and field review tentatively scheduled for 11/10.
8	8704	Irvington Area Pedestrian Improvements	Work involves installation of new ADA curb ramps, ped count down signals, accessible pedestrian signal devices at up to 7 intersections on Fremont Blvd between Eugene to Washington/Union/Bay. Project also involves widening existing median pedestrian refuge and construction of corner bulb-outs at Fremont/Clough intersection. Project modifies SB right turn on Fremont Blvd to minimize pedestrian crossing conflict on Fremont Blvd at Washington. Measure B competitive grant funds awarded to the City of \$342,000. Measure B Bike and Ped funds appropriated for this project is for local match.	7/09	4/11	\$400,000	\$58,000	\$51,000	Project is on schedule. Completing design plans with construction bid opening scheduled for 12/10.
9	8706	East Warren Avenue Sidewalk Improvements	Project involves construction of new sidewalk on E. Warren Avenue from Yakima Drive to West of I-680. Sidewalk is en-route to James Lettch Elementary School.	7/09	8/12	\$385,000	\$160,000	\$160,000	Project is on schedule. Preliminary engineering underway. Next steps complete design by 10/11.



**City of Fremont Measure B Bicycle Pedestrian Projects/Program Status Report as of June 30, 2010**

	PWC #	Project Name	Project Description	First Funded	Estimated Project Completion	Total Project Cost	Total Measure B Funds Appropriated	Remaining Balance as of 6/30/10	Status/Next Steps
10	8707	Bay Trail Alternative Alignment Study/Preliminary Eng.	Bay Trail Gap Feasibility study - preliminary engineering and feasibility study to construct a class 1 trail from south terminus of Fremont Boulevard to Dixon Landing Road/McCarthy Blvd. SF Bay Trail Grant received for \$75,000. Measure B funds appropriated for this project is to supplement Bay Trail Grant Fund and local match.	6/09	4/11	\$110,000	\$35,000	\$26,950	Project is on schedule. Project feasibility study ongoing with Questa Engineering. First public meeting held Sep 2010. Initial environment assessment is being conducted as part of the feasibility study. Next steps is to complete administrative draft of feasibility study report.
11	8698	Cedar Street Sidewalk Improvements	Project involves construction of new sidewalk on Cedar Street in the vicinity of Mission San Jose Elementary School.	7/09	8/11	\$250,000	\$215,000	\$215,000	Project is on schedule. Plans 75% complete. Next steps is to complete design. Bid opening scheduled on 5/11.

## Category 2: Ongoing Projects

	PWC #	Project Name	Project Description	First Funded	Estimated Project Completion	Total Project Cost	Total Measure B Funds Appropriated	Remaining Balance as of 6/30/10	Status/Next Steps
1	8541	Citywide Bicycle & Pedestrian Projects	Ongoing and annual Staff administration for the development and planning of bicycle and pedestrian projects such as preparing grant applications, grant monitoring compliance, participation in Regional, County and local Bicycle and Pedestrian Plan development and update. Bicycle and Pedestrian Technical Advisory Committee staffing. Development, update and purchase of bikeway maps. Funding of miscellaneous Bicycle and Pedestrian programs such as the purchase of bike racks and bike lockers.	7/03	N/A	\$699,516	\$699,516	\$61,208	Ongoing and annual Staff administration for development and planning of bicycle and pedestrian projects plus funding of miscellaneous bicycle and pedestrian projects.
2	8616	Traffic Safety and Education Program	Ongoing, annual traffic education program. Hold traffic safety workshops and rodeos with local schools through Smartz Moves Traffic Education Consultant. 6,000 students from pre-school through 6 the grade participate annually.	7/05	N/A	\$270,000	\$270,000	\$64,000	Ongoing, annual traffic education program. Existing Traffic Education Consultant's agreement expires 1-31-11.

**City of Fremont Measure B Bicycle Pedestrian Projects Completed as of June 30, 2010**

## Category 3 : Completed Projects

	PWC #	Project Name	Project Description	First Funded	Estimated Project Completion	Total Project Cost	Total Measure B Funds Appropriated	Remaining Balance as of 6/30/10	Status/Next Steps
1	8234	Citywide Overlay Projects	Annual Citywide Overlay Project is ongoing in the preventive maintenance program in the City of Fremont. Measure B funds appropriated for this project is for the installation of new curb ramps or modify existing curb ramps to conform to ADA requirements for intersections along project street segments planned for overlay.	7/05	N/A	\$2,708,000	\$26,405	\$0	Project Complete.
2	8487	Bryant Street Sidewalk	Construct sidewalk, driveways, curb and gutter on unimproved Bryant Street across Mission San Jose Elementary School between Anza Street and Cedar Street.	7/03	N/A	\$375,000	\$375,000	\$0	Project Completed.
3	8567	Mowry/Argonaut & Mowry/Logan Traffic Signal Modifications.	Project involves modification of two signalized intersections. Measure B Funds appropriated to fund pedestrian facilities improvement portion of the project such as curb ramp and sidewalk construction.	7/03	N/A	\$422,000	\$40,000	\$0	Project Completed.
4	8576	Bicycle & Pedestrian Plan Development	Develop citywide comprehensive bicycle and pedestrian plan.	7/03	N/A	\$80,000	\$80,000	\$0	Project Completed.
5	8578	Paseo Padre Parkway Bicycle Lanes	Re-striping of bicycle lanes on Paseo Padre Parkway between Decoto Road and Thornton Avenue to conform to the most current bikeway standards.	7/05	N/A	\$71,000	\$71,000	\$0	Project Completed.
6	8584	Fremont Boulevard Bicycle Lanes Project	Project involves installation of new bicycle lanes on Fremont Boulevard between Beard Road and Mowry Avenue. Measure B funds used to supplement TFCA grant funds received for the project.	7/05	N/A	\$220,000	\$23,751	\$0	Project completed
7	8588	Mowry/Glenview Traffic Signal Modifications.	Project involves modification of signalized intersection. Measure B Funds appropriated to fund pedestrian facilities portion of the project such as curb ramp and sidewalk work.	7/05	N/A	\$204,000	\$14,919	\$0	Project Completed.

**City of Fremont Measure B Bicycle Pedestrian Projects Completed as of June 30, 2010**

	PWC #	Project Name	Project Description	First Funded	Estimated Project Completion	Total Project Cost	Total Measure B Funds Appropriated	Remaining Balance as of 6/30/10	Status/Next Steps
8	8611	Fremont Boulevard Bicycle Lanes Project between Tamayo Street and Decoto Road.	Project involves installation of new bicycle lanes on Fremont Boulevard between Tamayo Street and Decoto Road and asphalt paving at shoulder as part of a Bicycle Transportation Account (BTA) grant funds. Measure B funds used to supplement TFCA grant funds received for the project.	7/05	N/A	\$18,000	\$18,000	\$0	Project design completed. BTA grant funds rescinded due to CALTRAN encroachment permit denial frontage Route 84 corridor.
9	8615	Pedestrian Master Plan	Project involves the development of Citywide Pedestrian Master Plan	7/05	N/A	\$139,942	\$139,942	\$0	Project Completed
10	8636	Pedestrian Signal Upgrade Project	Project involves upgrade of existing non-standard pedestrian signals to current standards.	7/06	N/A	\$197,980	\$197,980	\$0	Project Completed.
11	8637	Fremont/Nicolet Pedestrian/Traffic Signal Improvement	Project involves installation of new corner bulb-outs, ADA curb ramps, ped count down signals, accessible pedestrian signal devices and traffic signals to improve pedestrian crossing at the intersection.	7/06	N/A	\$425,000	\$275,000	\$0	Project completed 11/09. Project under warranty period and will be closed out in 11/10.
12	8645	Citywide Bicycle Parking Facilities Project	Project involves the installation 91 inverted U bicycle racks and 60 electronic bicycle locker parking spaces citywide such as at the Fremont BART Station, Centerville Train Station, 2 park and ride lots and various parks, libraries, community centers and activity centers throughout the city. The Measure B funds appropriated towards this project is to supplement other project funds.	9/2007	6/11	\$290,000	\$25,000	\$0	Measure B fund portion of project completed.

CITY OF MONT  
PWC PROJECT FUND REPORT  
AS OF 06/30/09  
RUN DATE 10/18/10

PROJECT/FUND# & DESCRIPTION OBJECT CODE & DESCRIPTION =====	CURRENT MONTH'S EXP =====	TOTAL APPROPRIATIONS =====	TOTAL EXPENDITURES =====	ENCUMBRANCE =====	UNENCUMBERED BALANCE =====	\$ =====
*7946 EAST-WEST CONNECTOR-CITY STAFF						
508 ACTIA MEAS B-LOCAL STREET/ROAD	9,611.15	130,000.00	96,244.72	0.00	33,755.28	74.03
PROJECT TOTAL	9,611.15	130,000.00	96,244.72	0.00	33,755.28	74.03
*8147 BART WARM SPRINGS EXTENSION						
508 ACTIA MEAS B-LOCAL STREET/ROAD	7,514.17	500,000.00	539,414.03	0.00	(39,414.03)	107.88
PROJECT TOTAL	7,514.17	500,000.00	539,414.03	0.00	(39,414.03)	107.88
8195 CITYWIDE CAPE SEALING						
508 ACTIA MEAS B-LOCAL STREET/ROAD	182.69	4,156,930.00	3,700,061.06	7,804.99	449,063.95	89.01
PROJECT TOTAL	182.69	4,156,930.00	3,700,061.06	7,804.99	449,063.95	89.01
8234 CITYWIDE OVERLAYS						
508 ACTIA MEAS B-LOCAL STREET/ROAD	95,479.86	3,725,000.00	2,785,948.04	144,506.56	794,545.40	74.79
PROJECT TOTAL	95,479.86	3,725,000.00	2,785,948.04	144,506.56	794,545.40	74.79
8289 UNDERGROUND PG&E FACILITIES						
508 ACTIA MEAS B-LOCAL STREET/ROAD	0.00	100,000.00	0.00	64,954.00	35,046.00	0.00
PROJECT TOTAL	0.00	100,000.00	0.00	64,954.00	35,046.00	0.00
8573 TRAFFIC SERVICE OPERATIONS						
508 ACTIA MEAS B-LOCAL STREET/ROAD	10,807.56	916,000.00	894,208.13	0.00	21,791.87	97.62
PROJECT TOTAL	10,807.56	916,000.00	894,208.13	0.00	21,791.87	97.62
8603 DUMBARTON RAIL PROJECT						
508 ACTIA MEAS B-LOCAL STREET/ROAD	0.00	115,000.00	58,746.78	0.00	56,253.22	51.08

FILE: RXPWC FUND

CITY OF EMMONT  
PWC PROJECT FUND REPORT  
AS OF 06/30/09  
RUN DATE 10/18/10

Page 2

PROJECT/FUND# & DESCRIPTION OBJECT CODE & DESCRIPTION	CURRENT MONTH'S EXP	TOTAL APPROPRIATIONS	TOTAL EXPENDITURES	ENCUMBRANCE	UNENCUMBERED BALANCE	
=====	=====	=====	=====	=====	=====	=====
PROJECT TOTAL	0.00	115,000.00	58,746.78	0.00	56,253.22	51.08
=====	=====	=====	=====	=====	=====	=====
8619 SIGNAL COORDINATION PROGRAM						
508 ACTIA MEAS B-LOCAL STREET/ROAD	1,932.00	280,000.00	72,838.50	0.00	207,161.50	26.01
PROJECT TOTAL	1,932.00	280,000.00	72,838.50	0.00	207,161.50	26.01
=====	=====	=====	=====	=====	=====	=====
8666 NILES BLVD ROADWAY IMPROVEMENT						
508 ACTIA MEAS B-LOCAL STREET/ROAD	0.00	1,050,000.00	0.00	0.00	1,050,000.00	0.00
PROJECT TOTAL	0.00	1,050,000.00	0.00	0.00	1,050,000.00	0.00
=====	=====	=====	=====	=====	=====	=====
8668 STREET LIGHT STANDARDS STUDY/U						
508 ACTIA MEAS B-LOCAL STREET/ROAD	0.00	100,000.00	396.32	0.00	99,603.68	0.40
PROJECT TOTAL	0.00	100,000.00	396.32	0.00	99,603.68	0.40
=====	=====	=====	=====	=====	=====	=====
8678 CONGESTION MANAGEMENT PROGRAM						
508 ACTIA MEAS B-LOCAL STREET/ROAD	12,506.42	575,000.00	502,055.00	7,587.03	65,357.97	87.31
PROJECT TOTAL	12,506.42	575,000.00	502,055.00	7,587.03	65,357.97	87.31
=====	=====	=====	=====	=====	=====	=====

FILE: RXPWCFUND

## **Measure B Projects 2008-2009**

**8195 Citywide Cape Sealing:** The City did spend \$950,168 of Measure B funds in 08/09, which left a balance of \$457k left to spend on this project. The City had also received a State grant for \$122k that needed to be spent, which delayed spending additional Meas B funds.

The City had planned to spend the remaining Meas B balance of \$457k on this project in FY 09/10, however, since we received Prop 42 funds in 09/10, and these funds have a deadline for use of funds, the City needed to spend more in Prop 42 funds on this project instead of using Meas B funds.

**8234 Citywide Overlays:** The City spent \$915,908 of Measure B funds in 08/09, which left a balance of \$939k left to spend on this project. The City had received Prop 42 funds and a large amount of Prop 1B funds, which both have deadlines for spending the funds, so over \$1.6M was spent out of these two funds on the project, which delayed use of the Meas B funds.

**8289 Underground PG&E Facilities:** The balance as of June 30, 2009 on this project was \$100,000. Because of the higher priority projects which had Prop 42 and Prop 1B funds that had tight deadlines to expend funds, limited staff time was available for this project.

**8666 Niles Blvd Roadway Improvement:** The balance as of June 30, 2009 was \$1.05M. The City is currently using a portion of these funds for design of the project with the remaining funds to be used for the construction of the project currently scheduled for Summer 2011.

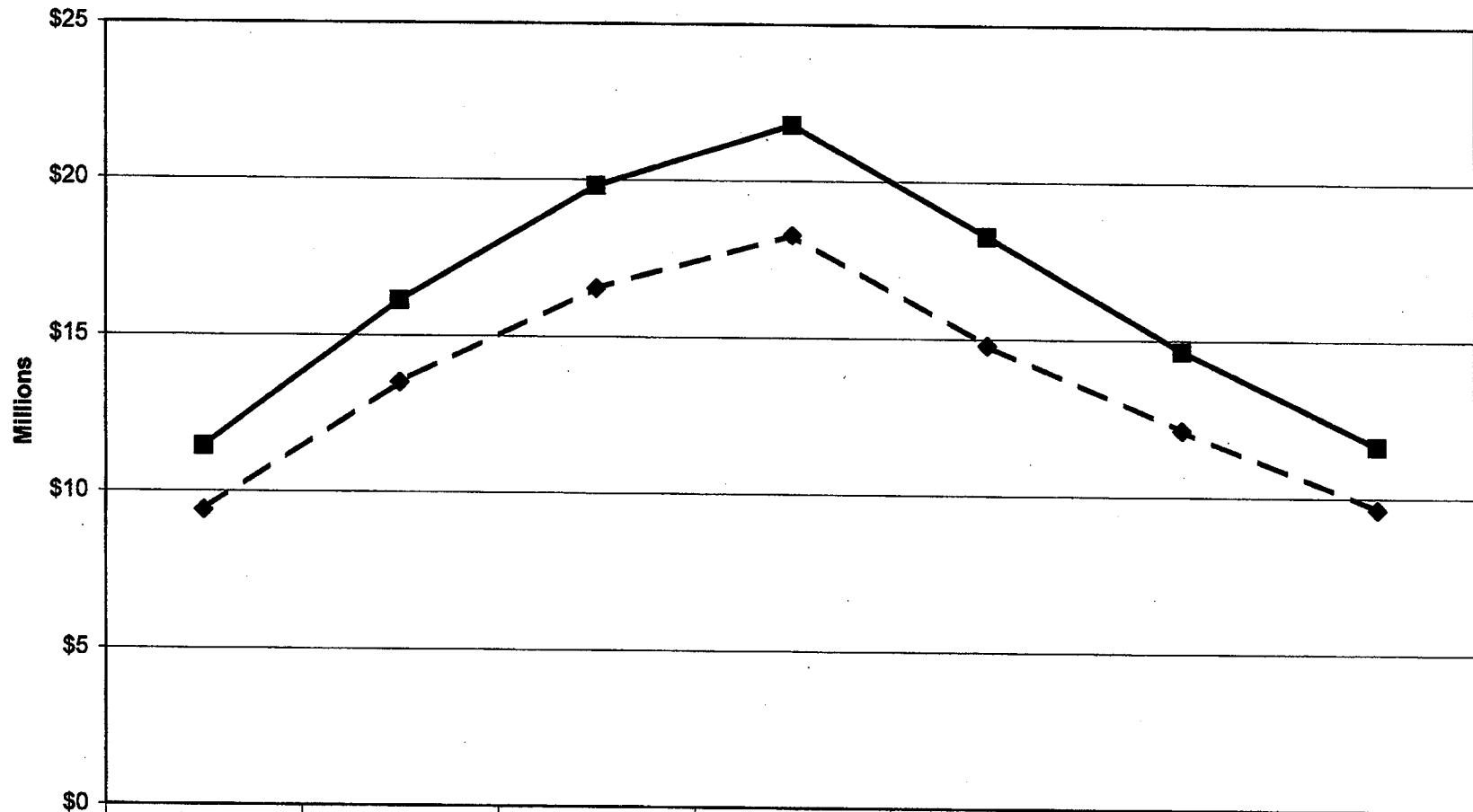
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Citizen Watchdog Committee  
Adhoc Committee Meeting  
November 3, 2010

City of Oakland, Measure B

**Oakland Measure B, Ending Balance over Time**



	03/04	04/05	05/06	06/07	07/08	08/09	09/10
■ Bike/Ped	\$2,051,787	\$2,611,657	\$3,276,303	\$3,516,744	\$3,474,911	\$2,526,439	\$2,000,000
◆ Streets	\$9,406,328	\$13,501,542	\$16,535,293	\$18,266,679	\$14,793,555	\$12,128,727	\$9,648,452

◆ Streets ■ Bike/Ped

Oakland Balance compared to Annual Revenues  
(08/09 Audit Summary)

Jurisdiction	Revenues	Ending Balance	balance/rev
Alameda County	2,552	8,669	3.4
Dublin	423	1,314	3.1
Pleasanton	828	1,840	2.2
Union City	1,314	2,863	2.2
Livermore	960	1,873	2.0
Fremont	2,857	4,970	1.7
Alameda	2,415	4,006	1.7
Oakland	9,967	14,670	1.5
San Leandro	1,476	2,014	1.4
Piedmont	349	408	1.2
Emeryville	237	268	1.1
Hayward	2,613	2,020	0.8
Berkeley	2,558	1,561	0.6
Newark	595	154	0.3
Albany	363	8	0.0

Average

1.5

## How Oakland Appropriates Funds

From 08/09 Report:

“In addition to the total expenditures of \$11,137,791, the City had \$1,294,798 committed for outstanding contract obligations plus \$9,747,171 appropriated to fund a variety of projects. Thus the total amount expended and committed for funding in FY2008-09 amounts to \$22,179,760.”

Expenditures =	Actual Spent
Committed =	Encumbered in a contract, but not actually spent yet
Appropriated =	The estimated cost of all current projects

- We appropriate annually based on available fund balances.
- We estimate the entire cost of the project in appropriations
- We use the total appropriated to ensure that we are not over-committing projects, regardless of year of actual expenditure.

## How Oakland Appropriates Funds (2):

In recent years there has been a shift from capital to O&M maintenance

First priority: approximately \$4.5 million for O&M maintenance activities

Second priority: complete current capital projects

Third priority: as available, program new projects

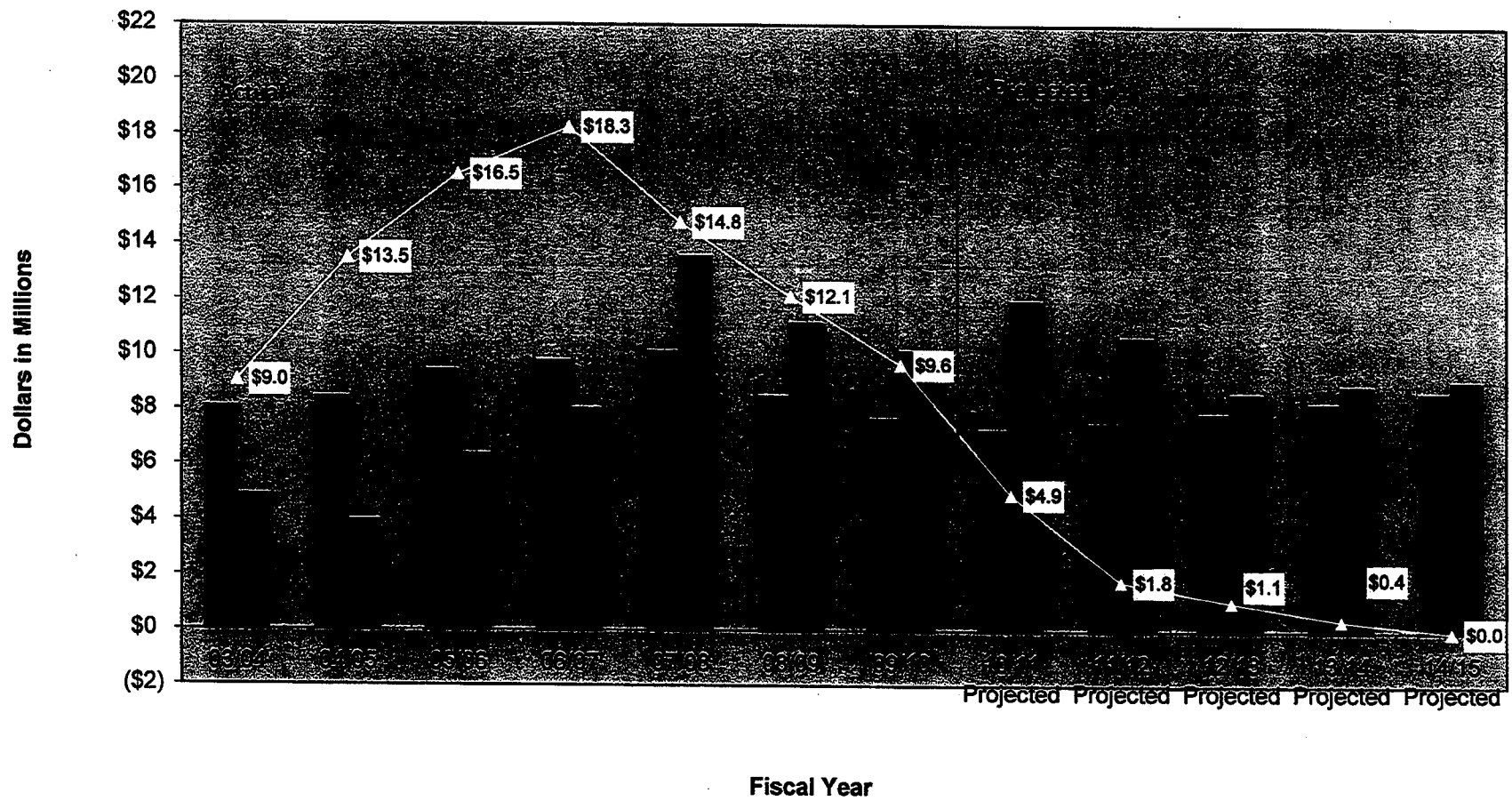
Maintenance Detail:

Oakland budgets by project, and all “non-project” expenditures are reported in one line item.

- 2007/8            \$5.8 million
- 2008/9            \$5.7 million

For the past two years, we have provided ACTIA with a break down of that line item to further identify use of funds. Most of this funding is used broadly for street and road maintenance, both personnel and materials/direct costs.

# **Measure B Revenue, Expenditure & Fund Balance (ACTC Audit Reports)**



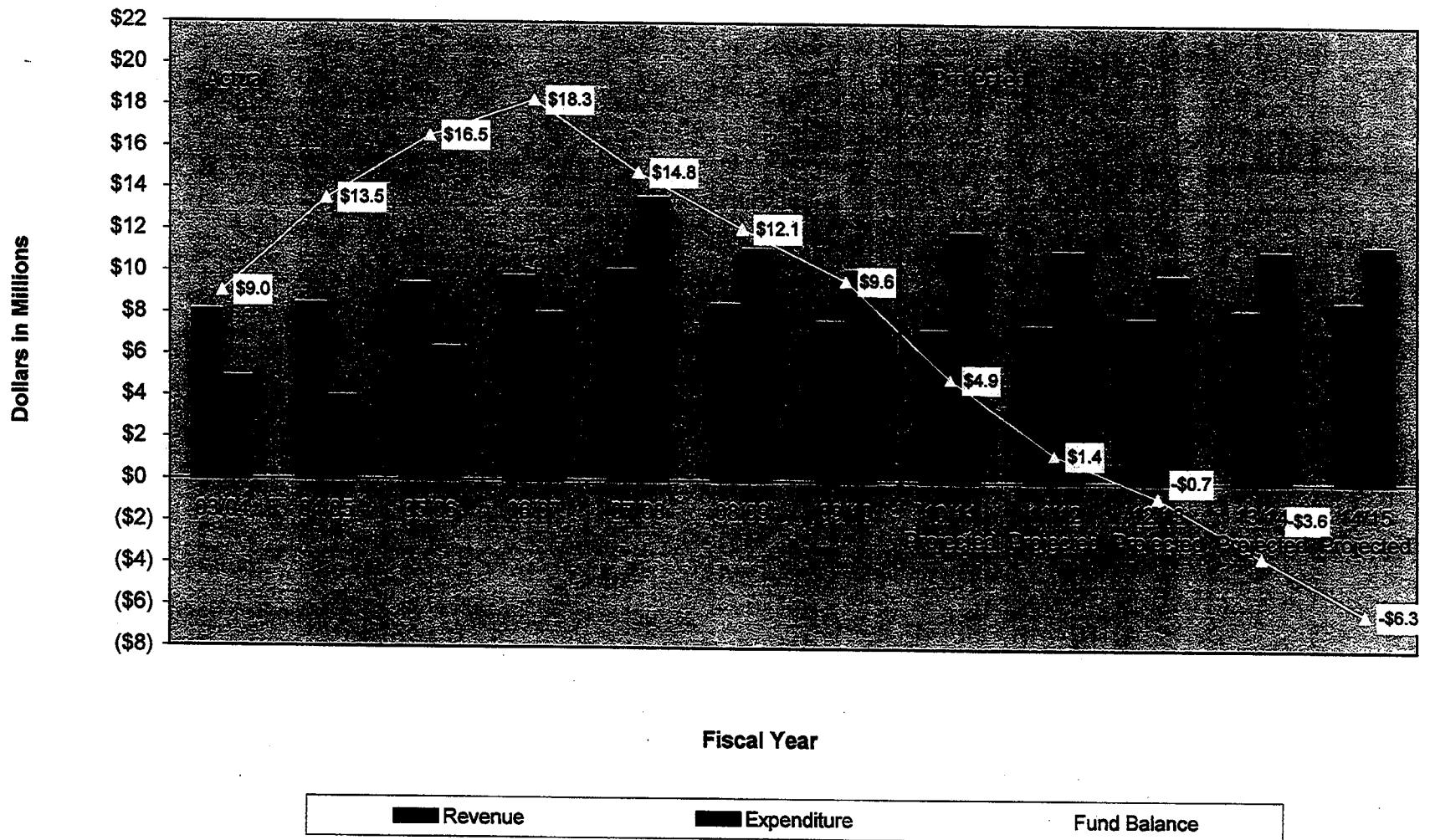
Measure B - Fund 2211

Projected Appropriation and Expenditure

	<u>FY10/11</u>	<u>FY11/12</u>	<u>FY12/13</u>	<u>FY13/14</u>	<u>FY14/15</u>
<b>Projected Revenue</b>	<b>7,244,867</b>	<b>7,476,703</b>	<b>7,850,538</b>	<b>8,243,065</b>	<b>8,655,218</b>
<b>Projected New Appropriation</b>	<b>7,717,450</b>	<b>8,649,240</b>	<b>8,822,225</b>	<b>8,998,669</b>	<b>9,178,643</b>
Projected O&M	4,362,000	4,449,240	4,538,225	4,628,989	4,721,569
Projected Capital	3,355,450	4,200,000	4,284,000	4,369,680	4,457,074
<b>Projected Expenditure</b>	<b>11,944,000</b>	<b>10,622,013</b>	<b>8,592,475</b>	<b>8,896,525</b>	<b>9,074,456</b>
Projected O&M	4,362,000	4,449,240	4,538,225	4,628,989	4,721,569
Projected Capital	7,582,000	6,172,773	4,054,250	4,267,536	4,352,887

<b>Detail: Projected Capital Expenditure</b>						
	<b>Total</b>	<b><u>FY10/11</u></b>	<b><u>FY11/12</u></b>	<b><u>FY12/13</u></b>	<b><u>FY13/14</u></b>	<b><u>FY14/15</u></b>
<b>Pre-10/11 Appropriation</b>	<b>11,076,773</b>					
Y1		6,744,000				
Y2			4,332,773			
<b>FY10-11 Appropriation</b>	<b>3,355,450</b>					
Y1		838,000				
Y2			1,000,000			
Y3				1,517,450		
<b>FY11-12 Appropriation</b>	<b>4,200,000</b>					
Y1 20%			840,000			
Y2 40%				1,680,000		
Y3 40%					1,680,000	
<b>FY12-13 Appropriation</b>	<b>4,284,000</b>					
Y1 20%				856,800		
Y2 40%					1,713,600	
Y3 40%						1,713,600
<b>FY13-14 Appropriation</b>	<b>4,369,680</b>					
Y1 20%					873,936	
Y2 40%						1,747,872
Y3 40%						
<b>FY14-15 Appropriation</b>	<b>4,457,074</b>					
Y1 20%						891,415
Y2 40%						
Y3 40%						
<b>Total Projected Capital Expenditures</b>		<b>7,582,000</b>	<b>6,172,773</b>	<b>4,054,250</b>	<b>4,267,536</b>	<b>4,352,887</b>

# **Measure B Revenue, Expenditure & Fund Balance (ACTC Audit Reports)**





## FY 10/11 and 11/12 Spending Plan Measure B Local Streets and Roads

### Detail on Largest Outstanding Balances

- Curb Ramp and Sidewalk Repair Project totaling \$2.5 million is currently in bid award phase. Construction set to begin in Q3/11
- Traffic Signal Lighting Replacement Project totaling \$500,000 currently underway, scheduled to be implemented over next two years
- Matching Funds for other grants totals \$500,000. Depends on yearly grant activity, but historically we fully utilize.
- Traffic Signal Installation Project totaling \$500,000 is in bid award phase. Construction set to begin Q4/11.
- Citywide Emergency Roadway Repair – set aside \$400,000 annually, actual spending dependent on events
- Integrated Traffic Management Center - \$280,000 available, will be used to fund on-call contract for installation of fiberoptic spine starting in Q4/11

### Monitoring:

- Review Progress Quarterly
- Review Budget Assumptions
- Reprogram Excess Funds in next budget cycle

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## Memorandum

**DATE:** December 29, 2010

**TO:** CWTP-TEP Technical Advisory Working Group  
CWTP-TEP Community Advisory Working Group

**FROM:** Beth Walukas, Manager of Planning  
Tess Lengyel, Manager of Programming and Public Affairs

**SUBJECT:** Review Sustainable Community Strategy (SCS)/Regional Transportation Plan (RTP)  
and Countywide Transportation Plan (CWTP)/Transportation Expenditure Plan  
Information

### Recommendations:

This item is for information only. No action is requested.

### Summary:

This item provides information on regional and countywide transportation planning efforts related to the updates of the Countywide Transportation Plan and Sales Tax Transportation Expenditure Plan (CWTP-TEP) as well as the Regional Transportation Plan (RTP) and the development of the Sustainable Community Strategy (SCS).

### Discussion:

In an effort to keep our various committees up to date on the regional and countywide planning processes, staff will be submitting monthly reports to ACTAC; the Planning, Policy and Legislation Committee (PPLC); the Alameda CTC Board; the Citizens Watchdog Committee, Paratransit Advisory and Planning Committee, Citizens Advisory Committee, and Bicycle and Pedestrian Advisory Committee detailing what information is being discussed and reviewed by the CWTP-TEP Steering Committee and the CWTP-TEP Technical and Community Advisory Working Groups. Since our countywide planning efforts parallel the regional planning efforts, this report will also provide relevant information on regional processes. The purpose is to identify on a regular basis where input from Committee members is desired. All documents and agendas are posted on the Alameda CTC website.

### Summary of Countywide Planning Efforts

The three year CWTP-TEP schedule showing countywide and regional planning milestones is attached (Attachment A). In the next three months, the CWTP-TEP Committees will be focusing on:

- finalizing the vision and goals;
- placing the CWTP-TEP update in context of Alameda County demographics and current performance of the transportation system. The Committees are currently reviewing and

providing comment on a Briefing Book, available on the Alameda CTC's website, that is intended to be an information and reference document and a point of departure for the discussion on transportation needs;

- discussing and identifying performance measures and a methodology for prioritizing improvements;
- identifying transportation needs and issues including review of a series of white papers identifying best practices and strategies;
- conducting polling for an initial read on voter perceptions;
- discussing and identifying how to do the call for projects, particularly how we can combine with the regional call and what kind of supplemental information we will need;
- coordinating with ABAG and local jurisdictions on defining the Vision Scenarios for the Sustainable Communities Strategy;
- defining a public participation approach and beginning public outreach efforts; and

Additionally, the Alameda CTC Board met on December 17, 2010 for its annual retreat. One of the key items discussed was the CWTP-TEP update. Staff is in the process of documenting the results of the discussion and will provide information at the meeting as it is available.

#### Summary of Regional Planning Efforts

We have been coordinating the CWTP-TEP efforts with work on the Regional Transportation Plan (RTP), the Sustainable Communities Strategy (SCS) and other Plans and direction being developed by the San Francisco Bay Conservation and Development Commission (BCDC) and the Bay Area Air Quality Management District (BAAQMD). In the first quarter of 2011, the regional efforts are focusing developing a SCS Vision Scenario, getting the word out to City Councils and Boards of Directors on what the SCS is, beginning the RHNA process, developing financial projections and a committed transportation funding policy, developing a call for projects, and completing the work on targets and indicators for assessing performance of the projects.

In the next three months, staff will be coordinating with the regional agencies and providing feedback on these issues, including:

- participating on the MTC/ABAG Regional Advisory Working Group (RAWG), which is in the process of defining performance targets and indicators with which to compare and evaluate the SCS land use scenarios, presenting information on how the Priority Development Area Assessment will be used in developing the Vision Scenarios; and seeking input on the initial Vision Scenario that is being developed. ABAG is working directly with the local jurisdiction Planning Directors to seek input from each local City Council or Board of Directors on the Vision Scenario in January and February 2011. Attachment B contains a draft staff report developed by ABAG for use by the local jurisdiction;
- participating on regional Sub-committees: on-going performance targets and indicators and the equity sub-committee which is being formed by MTC;

These activities will feed into our discussion on revenue and financial projections and availability and the discussion of transportation investment both new and existing that will begin around the early spring timeframe.

#### Key Dates and Opportunities for Input

The key dates shown in Attachment A are indications of where input and comment are desired. The major activities and dates are highlighted below by activity:

*Sustainable Communities Strategy:*

Presentation of SCS Vision Scenario information to local jurisdictions: January/February 2011

Detailed SCS Scenarios Released: July 2011

Preferred SCS Scenario Released/Approved: December 2011/January 2012

*RHNA*

RHNA Process Begins: January 2011

Draft RHNA Plan released: February 2012

Final RHNA Plan released/Adopted: July 2012/October 2012

*RTP*

Develop Financial Forecasts and Committed Funding Policy: February 2011

Call for RTP Transportation Projects and Performance Assessment: March 2011 - September 2011

Transportation Policy Investment Dialogue: October 2011 – February 2012

Prepare SCS/RTP Plan: April 2012 – October 2012

Draft RTP/SCS for Released: November 2012

Adopt SCS/RTP: April 2013

*CWTP-TEP*

Draft List of CWTP screened Projects and Programs: July 2011

First Draft CWTP: September 2011

TEP Program and Project Packages: September 2011

Draft CWTP and TEP Released: January 2012

Outreach: January 2012 – June 2012

Adopt CWTP and TEP: July 2012

TEP Submitted for Ballot: August 2012

Upcoming Meetings:

<b>Committee</b>	<b>Regular Meeting Date and Time</b>	<b>Next Meeting</b>
CWTP-TEP Steering Committee	4 <sup>th</sup> Thursday of the month, noon Location: Alameda CTC	January 27, 2011 February 24, 2011
CWTP-TEP Technical Advisory Working Group	1 <sup>st</sup> Tuesday of the month, 11:00 a.m. Location: Alameda CTC	January 4, 2011 February 1, 2011
CWTP-TEP Community Advisory Working Group	1 <sup>st</sup> Thursday of the month, 3:00 p.m. Location: Alameda CTC	January 6, 2011 February 3, 2011
SCS/RTP Regional Advisory Working Group	1 <sup>st</sup> Tuesday of the month, 9:30 a.m. Location: MetroCenter, Oakland	January 4, 2011 February 1, 2011
SCS/RTP Performance Target Ad Hoc Committee	Varies Location: MetroCenter, Oakland	January 11, 2011
SCS/RTP Equity Ad Hoc Committee	TBD	TBD

**Fiscal Impacts:** None.

**Attachments:**

Attachment A: Three Year CWTP-TEP Planning Schedule

Attachment B: ABAG Staff Report Template on SCS

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Calendar Year 2010

2010													FY2010-2011		2010	
Task	January	February	March	April	May	June	July	August	Sept	Oct	Nov	Dec				
	Alameda CTC Committee/Public Process															
Steering Committee			Establish Steering Committee	Working meeting to establish roles/responsibilities, community working group	RFP feedback, tech working group	Update on Transportation/Finance Issues	Approval of Community working group and steering committee next steps	No Meetings		Feedback from Tech, comm working groups	No Meetings	Expand vision and goals for County ?				
Technical Advisory Working Group								No Meetings		Roles, resp, schedule, vision discussion/feedback	No Meetings	Education: Trans statistics, issues, financials overview				
Community Advisory Working Group								No Meetings		Roles, resp, schedule, vision discussion/feedback	No Meetings	Education: Transportation statistics, issues, financials overview				
Public Participation								No Meetings			Stakeholder outreach					
Agency Public Education and Outreach	Information about upcoming CWTP Update and reauthorization															
Alameda CTC Technical Work																
Technical Studies/RFP/Work timelines: All this work will be done in relation to SCS work at the regional level						Board authorization for release of RFPs	Pre-Bid meetings	Proposals reviewed	ALF/ALC approves shortlist and interview; Board approves top ranked, auth. to negotiate or NTP	Technical Work						
Polling																
Sustainable Communities Strategy/Regional Transportation Plan																
Regional Sustainable Community Strategy Development Process - Final RTP in April 2013			Local Land Use Update P2009 begins & PDA Assessment begins						Green House Gas Target approved by CARB.	Start Vision Scenario Discussions						
													Adopt methodology for Jobs/Housing Forecast (Statutory Target)	Projections 2011 Base Case		
														Adopt Voluntary Performance Targets		

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Countywide Transportation Plan and Transportation Expenditure Plan  
Preliminary Development Implementation Schedule - Updated 12/22/10

Printed: 12/30/2010

Calendar Year 2011

Task		2011					FY2011-2012					2011				
		January		February	March	April	May	June	July	August	Sept	Oct	Nov	Dec		
Alameda CTC Committee/Public Process																
Steering Committee		Adopt vision and goals; begin discussion on performance measures, key needs	Continue discussion on performance measures, costs guidelines, call for projects	Review workshop outcomes, white paper issues , strategies and best practices, call for projects	No Meetings	Review Call for Projects outcomes; Discuss TEP funding strategies	No Meetings.	Project evaluation outcomes; outline of CWTP; TEP Strategies	No Meetings	1st Draft CWTP, TEP potential project and program packages		Review 2nd draft CWTP; 1st draft TEP	No Meetings			
Technical Advisory Working Group		Comment on vision and goals; begin discussion on performance measures, key needs	Continue discussion on performance measures, costs guidelines, call for projects	Review workshop outcomes, white paper issues , strategies and best practices, call for projects	No Meetings	Review Call for Projects outcomes; Discuss TEP funding strategies	No Meetings.	Project evaluation outcomes; outline of CWTP; TEP Strategies	No Meetings	1st Draft CWTP, TEP potential project and program packages		Review 2nd draft CWTP; 1st draft TEP	No Meetings			
Community Advisory Working Group		Comment on vision and goals; begin discussion on performance measures, key needs	Continue discussion on performance measures, costs guidelines, call for projects	Review workshop outcomes, white paper issues , strategies and best practices, call for projects	No Meetings	Review Call for Projects outcomes; Discuss TEP funding strategies	No Meetings.	Project evaluation outcomes; outline of CWTP; TEP Strategies	No Meetings	1st Draft CWTP, TEP potential project and program packages		Review 2nd draft CWTP; 1st draft TEP	No Meetings			
Public Participation		Public Workshops in two areas of County: vision and needs; Central County Transportation Forum	Public Workshops in two areas of County: vision and needs	East County Transportation Forum				South County Transportation Forum	No Meetings		2nd round of public workshops in two areas of County: feedback on CWTP, B3; North County Transportation Forum	2nd round of public workshops in two areas of County: feedback on CWTP, B3	No Meetings			
Agency Public Education and Outreach		Ongoing Education and Outreach through November 2012					Ongoing Education and Outreach through November 2012					Ongoing Education and Outreach through November 2012				
Alameda CTC Technical Work																
Technical Studies/RFP/Work timelines: All this work will be done in relation to SCS work at the regional level		Feedback on Technical Work, Modified Vision, Preliminary projects lists				Work with feedback on CWTP and financial scenarios	First Draft CWTP using Scoring and Screening criteria	Technical work refinement and development of Expenditure plan, 2nd draft CWTP								
Polling		Conduct baseline poll									Polling on possible Expenditure Plan projects & programs					
Sustainable Communities Strategy/Regional Transportation Plan																
Regional Sustainable Community Strategy Development Process - Final RTP in April 2013		Release Vision Scenario	Detailed SCS Scenario Development				Release Detailed SCS Scenarios	Technical Analysis of SCS Scenarios	SCS Scenario Results/and funding discussions		Release Preferred SCS Scenario					
		Discuss Call for Projects		Call for Transportation Projects and Project Performance Assessment		Project Evaluation										
		Develop Draft 25-year Transportation Financial Forecasts and Committed Transportation Funding Policy														

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Countywide Transportation Plan and Transportation Expenditure Plan  
Preliminary Development Implementation Schedule - Updated 12/22/10

Calendar Year 2012

2012											
FY2011-2012											
Task	January	February	March	April	May	June	July	August	Sept	Oct	November
Alameda CTC Committee/Public Process											
Steering Committee	Full Draft TEP, Outcomes of outreach meetings	Finalize Plans				Adopt Draft Plans	Adopt Final Plans	Expenditure Plan on Ballot			VOTE: November 6, 2012
Technical Advisory Working Group	Full Draft TEP, Outcomes of outreach meetings	Finalize Plans									VOTE: November 6, 2012
Community Advisory Working Group	Full Draft TEP, Outcomes of outreach meetings	Finalize Plans									VOTE: November 6, 2012
Public Participation			Expenditure Plan City Council/BOS Adoption								VOTE: November 6, 2012
Agency Public Education and Outreach	Ongoing Education and Outreach Through November 2012 on this process and final plans						Ongoing Education and Outreach through November 2012 on this process and final plans				
Alameda CTC Technical Work											
Technical Studies/RFP/Work timelines: All this work will be done in relation to SCS work at the regional level	Finalize Plans										
Polling					Potential Go/No Go Poll for Expenditure Plan						
Sustainable Communities Strategy/Regional Transportation Plan											
Regional Sustainable Community Strategy Development Process - Final RTP in April 2013	Approval of Draft SCS		Begin RTP Technical Analysis & Document Preparation		Prepare SCS/RTP Plan						

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## Overview of the Sustainable Communities Strategy

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November 23, 2010

To: Planning Directors

From: Ken Kirkey, ABAG Planning Director

Re: Overview of the Sustainable Communities Strategy

ABAG and MTC have prepared an Overview of the Sustainable Communities Strategy (SCS) that you can use for a presentation before your city council and/or board of supervisors. We hope you find this report useful in communicating with elected officials and general public that might not be familiar with the SCS. This presentation will allow Bay Area elected officials to be informed about the SCS process before the release of the SCS Vision Scenario by February 2011.

Given the input we have received from various local jurisdictions, we expect this report will be used in different ways according to the specific needs of each city or county. Planning directors could (1) use it as a reference to develop their own reports; (2) use it as an attachment to their reports; or (3) edit and reformat this report to make it their own.

We would appreciate receiving any input from your elected officials on this SCS Overview presentation. We have created a folder for this input on the online collaboration sites (Basecamp) created for each county.

Should you have any questions about the report, please contact me ([kennethk@abag.ca.gov](mailto:kennethk@abag.ca.gov)) or the FOCUS regional planner for your county.

This staff report describes Senate Bill 375, the Sustainable Communities Strategy (SCS) and the effect of the law on local governments as well as the Bay Area as a region. This report is based on reports provided by the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG).

The SCS will be developed in partnership among regional agencies, local jurisdictions and Congestion Management Agencies (CMAs) through an iterative process. The regional agencies recognize that input from local jurisdictions with land use authority is essential to create a feasible SCS. The SCS does not alter the authority of jurisdictions over local land use and development decisions.

The purpose of this report is to provide council/board members with an overview of the SCS in relation to local land use policies, implementation needs, and quality of life, including key policy considerations for the City/County of (insert local information).

### **PURPOSE AND APPROACH**

Senate Bill 375 became law in 2008 and is considered landmark legislation for California relative to land use, transportation and environmental planning. It calls for the development of a Sustainable Communities Strategy (SCS) in all metropolitan regions in California. Within the Bay Area, the law gives joint responsibility for the SCS to the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG). These agencies will coordinate with the Bay Area Air Quality Management District (Air District) and the Bay Conservation and Development Commission (BCDC).

The SCS integrates several existing planning processes and is required to accomplish the following objectives:

1. Provide a new 25-year land use strategy for the Bay Area that is realistic and identifies areas to accommodate all of the region's population, including all income groups;
2. Forecast a land use pattern, which when integrated with the transportation system, reduces greenhouse gas emissions from automobiles and light trucks and is measured against our regional target established by the California Air Resources Board (CARB).

The SCS is a land use strategy required to be included as part of the Bay Area's 25-year Regional Transportation Plan (RTP). By federal law, the RTP must be internally consistent. Therefore, the over \$200 billion dollars of transportation investment typically included in the RTP must align with and support the SCS land-use pattern. SB 375 also requires that an updated

eight-year regional housing need allocation (RHNA) prepared by ABAG is consistent with the SCS. The SCS, RTP and RHNA will be adopted simultaneously in early 2013.

The SCS is not just about assigning housing need to places or achieving greenhouse gas targets. The primary goal is to build a Bay Area which continues to thrive and prosper under the changing circumstances of the twenty-first century. By directly confronting the challenges associated with population growth, climate change, a new economic reality and an increasing public-health imperative, the SCS should help us achieve a Bay Area which is both more livable and more economically competitive on the world stage. A successful SCS will:

- Recognize and support compact walkable places where residents and workers have access to services and amenities to meet their day-to-day needs;
- Reduce long commutes and decrease reliance that increases energy independence and decreases the region's carbon consumption;
- Support complete communities which remain livable and affordable for all segments of the population, maintaining the Bay Area as an attractive place to reside, start or continue a business, and create jobs.
- Support a sustainable transportation system and reduce the need for expensive highway and transit expansions, freeing up resources for other more productive public investments;
- Provide increased accessibility and affordability to our most vulnerable populations;
- Conserve water and decrease our dependence on imported food stocks and their high transport costs.

In recognition of the importance of these other goals, ABAG and MTC will adopt performance targets and indicators that will help inform decisions about land use patterns and transportation investments. These targets and indicators will apply to the SCS and the RTP. The targets and indicators are being developed by the Performance Targets and Indicators Ad Hoc Committee of the Regional Advisory Working Group (RAWG), which includes local planning and transportation staff, non-profit organizations, and business and developers' organizations. The targets are scheduled for adoption early 2011 and the indicators will be adopted in spring 2011.

## **BUILDING ON EXISTING EFFORTS**

In many respects the SCS builds upon existing efforts in many Bay Area communities to encourage more focused and compact growth while recognizing the unique characteristics and differences of the region's many varied communities. FOCUS Priority Development Areas (PDAs) are locally-identified and regionally adopted infill development opportunity areas near transit. The PDAs provide a strong foundation upon which to structure the region's first Sustainable Communities Strategy. PDAs are only three percent of the region's land area. However, local governments have indicated that based upon existing plans, resources, and incentives the PDAs can collectively accommodate over fifty percent of the Bay Area's housing need through 2035.

PDAs have been supported by planning grants, capital funding and technical assistance grants from MTC. The current RTP allocates an average of \$60 million a year to PDA incentive-related funding. Future RTPs, consistent with the SCS, will be structured to provide policies and funding that is supportive of PDAs and potentially other opportunity areas for sustainable development in the region.

## **PARTNERSHIP**

To be successful, the SCS will require a partnership among regional agencies, local jurisdictions, Congestion Management Agencies (CMAs), transit agencies, and other regional stakeholders. MTC and ABAG are engaged in an intense information exchange with County-Corridors Working Groups throughout the Bay Area. These Groups are organized by county, by sub-regions within counties, and by corridors that span counties. They typically include city and county planning directors, CMA staff, and representatives of other key agencies such as transit agencies and public health departments. Working Group members are responsible for providing updates and information to their locally elected policymakers through regular reports like this one and eventually through recommended council or board resolutions which acknowledge the implications of the SCS for each jurisdiction.

Each county has established an SCS engagement strategy and the composition of a County/Corridor Working Group according to their needs and ongoing planning efforts. In the City of (insert local information) our working group includes (insert local county information here). The County/Corridor Working Groups provide an opportunity for all of the region's jurisdictions to be represented in the SCS process and to provide ongoing information to, and input from, local officials through staff reports by working group members (local planning staff) to their city councils and/or boards of supervisors as the SCS process evolves through 2011. In addition to the County-Corridor Working Groups, a Regional Advisory Working Group (RAWG), composed of local government representatives and key stakeholders provides technical oversight at the regional level.

## **PROCESS – SCS SCENARIOS**

The final SCS will be the product of an iterative process that includes a sequence of growth and supportive transportation scenarios. Starting with an Initial Vision Scenario (February 2011), followed by more detailed SCS scenarios that refine the initial vision scenario (Spring and Fall 2011), and final draft (early 2012). For more information about the timeline, see *SCS Schedule – Attachment A*.

### Initial Vision Scenario

ABAG and MTC will release an Initial Vision Scenario in February 2011 based in large part on input from local jurisdictions through the county/corridor engagement process and information collected by December 2010. The Vision Scenario will encompass an initial identification of

places, policies and strategies for long-term, sustainable development in the Bay Area. Local governments will identify places of great potential for sustainable development, including PDAs, transit corridors, employment areas, as well as infill opportunities areas that lack transit services but offer opportunities for increased walkability and reduced driving.

The Initial Vision Scenario will:

- Incorporate the 25-year regional housing need encompassed in the SCS;
- Provide a preliminary set of housing and employment growth numbers at regional, county, jurisdictional, and sub-jurisdictional levels;
- Be evaluated against the greenhouse gas reduction target as well as the additional performance targets adopted for the SCS.

### Detailed Scenarios

By the early spring of 2011 the conversation between local governments and regional agencies will turn to the feasibility of achieving the Initial Vision Scenario by working on the Detailed Scenarios. The Detailed Scenarios will be different than the initial Vision Scenario in that they will take into account constraints that might limit development potential, and will identify the infrastructure and resources that can be identified and/or secured to support the scenario. MTC and ABAG expect to release a first round of Detailed Scenarios by July 2011. Local jurisdictions will provide input, which will then be analyzed for the release of the Preferred Scenario by the end of 2011. The County/Corridor Working Groups as well as the RAWG will facilitate local input into the scenarios through 2011. The analysis of the Detailed Scenarios and Preferred Scenario takes into account the Performance Targets and Indicators.

## **REGIONAL HOUSING NEEDS ALLOCATION**

As described above, the eight-year RHNA must be consistent with the SCS. Planning for affordable housing in the Bay Area is one of the essential tasks of sustainable development. In the SCS, this task becomes integrated with the regional land use strategy, the development of complete communities and a sustainable transportation system. The process to update RHNA will begin in early 2011. The county/corridor engagement process will include discussions of RHNA, since both the SCS and RHNA require consideration of housing needs by income group. Cities will discuss their strategies for the distribution of housing needs at the county level and decide if they want to form a sub-regional RHNA group by March 2011. The distribution of housing needs will inform the Detailed SCS Scenarios. Regional agencies will take input from local jurisdictions for the adoption of the RHNA methodology by September 2011. The final housing numbers for the region will be issued by the State Department of Housing and Community Development (HCD) by September 2011. The Draft RHNA will be released by spring 2012. ABAG will adopt the Final RHNA by the end of summer 2012. Local governments will address the next round of RHNA in their next Housing Element update.

This is a condensed description of the RHNA process. Additional details about procedural requirements (e.g. appeals, revisions and transfers) and substantive issues (e.g. housing by income category and formation of subregions) will be described in a separate document.

## REGIONAL TRANSPORTATION PLAN

The SCS brings an explicit link between the land use choices and the transportation investments. MTC and ABAG's commitment to the reduction of greenhouse gas emissions and provision of housing for all income levels translates into an alignment of the development of places committed to these goals and transportation, infrastructure and housing funding. The regional agencies will work closely with the CMAs, transportation agencies and local jurisdictions to define financially constrained transportation priorities in their response to a call for transportation projects in early 2011 and a detailed project assessment that will be completed by July/August 2011; the project assessment will be an essential part of the development of Detailed SCS Scenarios. The RTP will be analyzed through 2012 and released for review by the end of 2012. ABAG will approve the SCS by March 2013. MTC will adopt the final RTP and SCS by April 2013.

Regional agencies will prepare one Environmental Impact Report (EIR) for both the SCS and the RTP. This EIR might assist local jurisdictions in streamlining the environmental review process for some of the projects that are consistent with the SCS. Local jurisdictions are currently providing input for the potential scope of the EIR. Regional agencies are investigating the scope and strategies for an EIR that could provide the most effective support for local governments.

## ADDITIONAL REGIONAL TASKS

MTC, ABAG and the Bay Area Air Quality Management District are coordinating the impacts of CEQA thresholds and guidelines recently approved by the Air District. The Air District is currently developing tools and mitigation measures related to the CEQA thresholds and guidelines to assist with development projects in PDAs. The four regional agencies will be coordinating other key regional planning issues including any adopted climate adaptation-related policy recommendations or best practices encompassed in the Bay Plan update recently released by BCDC.

## UNIQUE LOCAL ROLE OF THE CITY OF (insert local jurisdiction) IN THE SUSTAINABLE COMMUNITIES STRATEGY

*Suggested questions to be addressed by Local Planning Director*

- *How do local planning efforts (i.e. General Plan, PDAs, Specific/Neighborhood Plans) relate to the SCS?*
- *What are the key local sustainable development issues/strategies that might be advanced through the SCS? (i.e. Employment growth, affordable housing, small town centers, schools)*
- *What are the key investments for a sustainable development path?*
- *How are local elected officials and staff participating in the regional SCS process?*



## **BENEFITS FOR ALL**

The SCS provides an opportunity for the City of (insert local jurisdiction) to advance local goals as part of a coordinated regional framework. By coordinating programs across multiple layers of government, the SCS should improve public sector efficiency and create more rational and coordinated regulation and public funding. The SCS connects local neighborhood concerns—such as new housing, jobs, and traffic—to regional objectives and resources. As such, it is a platform for cities and counties to discuss and address a wide spectrum of challenges, including high housing costs, poverty, job access, and public health, and identify local, regional, and state policies to address them. It gives local governments a stronger voice in identifying desired infrastructure improvements and provides a framework for evaluating those investments regionally. In this way, the SCS rewards those cities whose decisions advance local goals and benefit quality of life beyond their borders—whether to create more affordable housing, new jobs, or reduce driving.

Regional agencies are exploring the following support for the SCS:

- Grants for affordable housing close to transit
- Infrastructure bank to support investments that can accommodate housing and jobs close to transit
- Transportation investment in areas that can significantly contribute to the reduction of greenhouse gas emissions through compact development
- Infrastructure investments in small towns that can improve access to services through walking and transit.

## **NEXT STEPS**

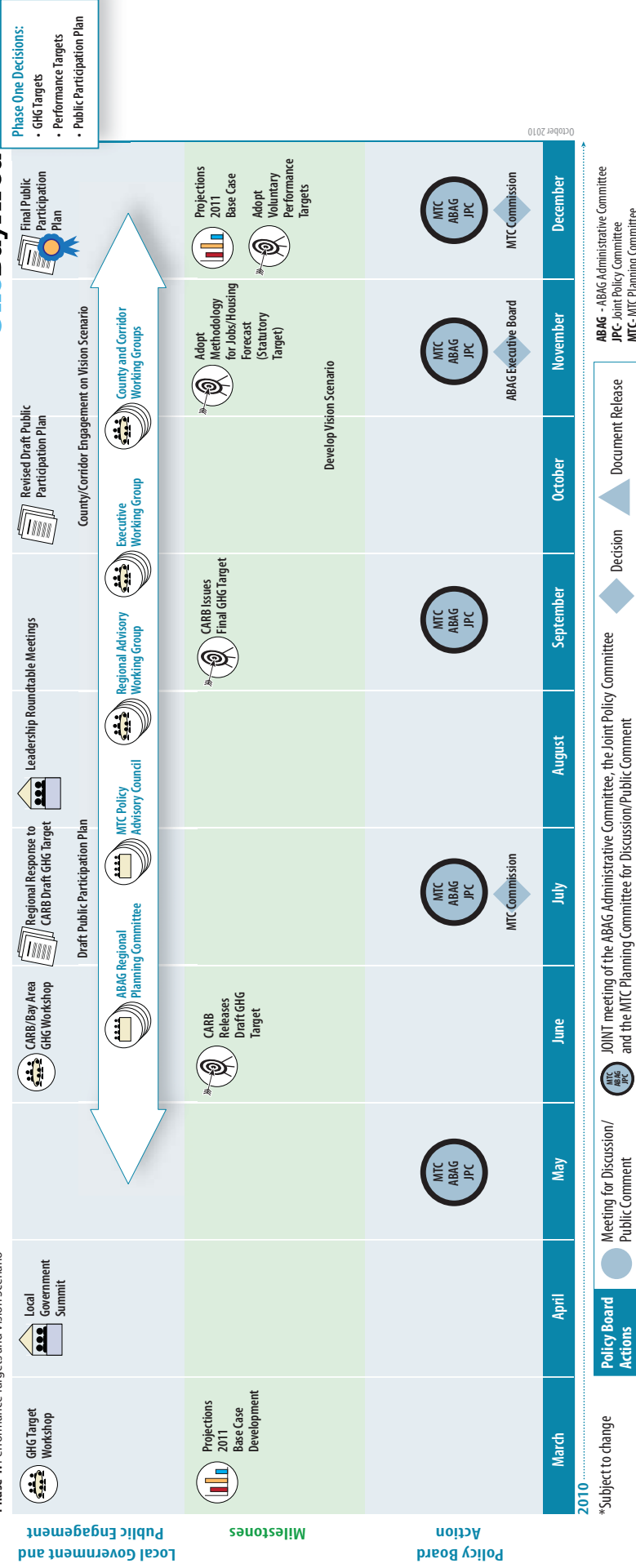
- Regional agencies expect to release an initial Vision Scenario in early February 2011.
- City (or County) staff will subsequently provide a report to (insert local description) describing the overall approach, regional context, and local implications for the City of (insert local jurisdiction).
- City (or County) staff will seek Council feedback and response to the initial Vision Scenario to be share with regional agencies. This feedback will serve as a basis for the development of Detailed SCS Scenarios through July 2011.

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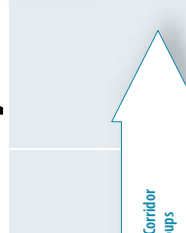
## Sustainable Communities Strategy Planning Process: Phase 1 Detail for 2010\*

Phase 1: Performance Targets and Vision Scenario

OneBayArea



**OneBayArea**



Policy Board Actions	Meeting for Discussion/ Public Comment	JOINT meeting of the ABAG Administrative Committee, the Joint Policy Committee and the MTC Planning Committee for Discussion/Public Comment

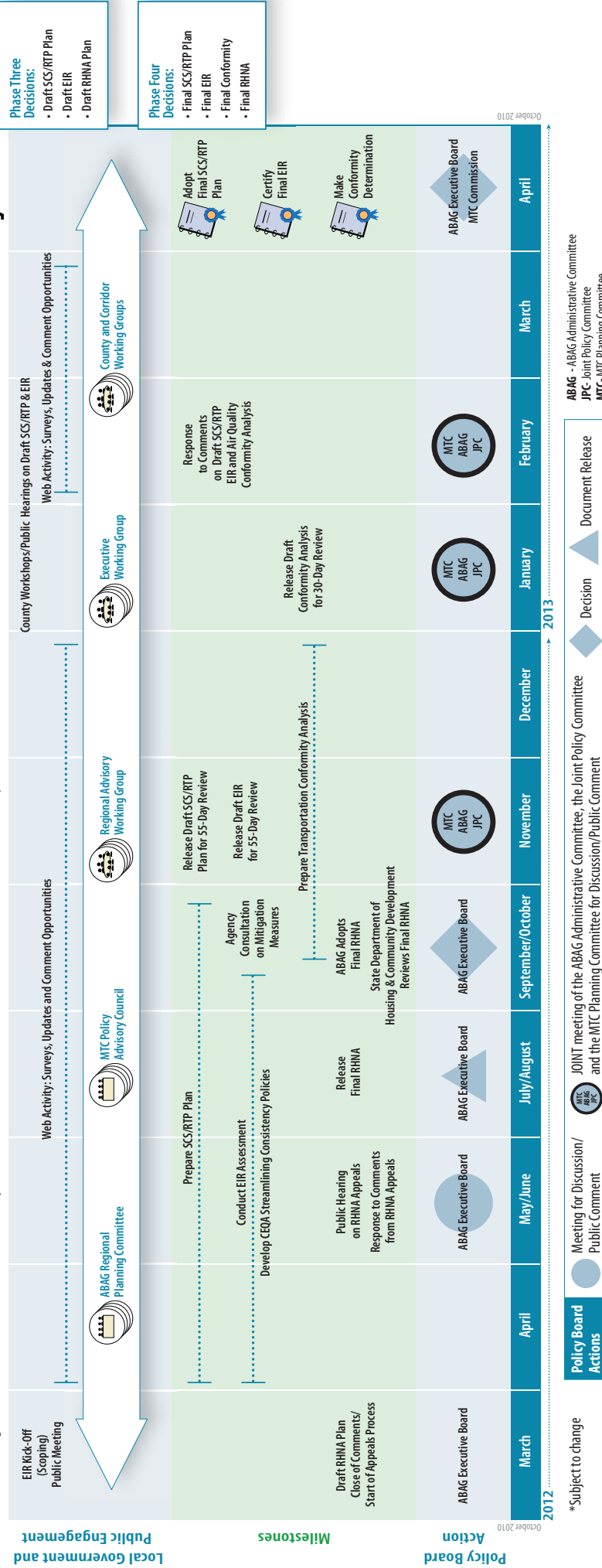
**ABAG** - ABAG Administrative Committee  
**JPC** - Joint Policy Committee  
**MTC** - MTC Planning Committee

# Sustainable Communities Strategy Planning Process: Phases 3 & 4 Details for 2012-2013\*

Phase 3: Housing Need Allocation, Environmental/Technical Analyses and Final Plans

Phase 4: Plan Adoption

OneBayArea



\*Subject to change

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Alameda County Transportation Authority  
Community Advisory Working Group

	Category	Organization	Planning Area	Title	First Name	Last Name
1	Health	UC Berkeley Safe Transportation and Education Center	CW	Ms.	Lindsay S.	Arnold
2	Business	California Alliance for Jobs.	CW	Mr.	Joseph R.	Cruz
3	Business	Economic Development Committee (Oakland)	North	Ms.	Charissa M.	Frank
4	CWC Organization	Alameda County Taxpayer's Association	CW	Mr.	Arthur B.	Geen
5	Civil Rights/Env./Social Justice/Faith-based Adv.	Transportation Justice Working Group	CW	Ms.	Chaka-Khan	Gordon
6	CWC Organization	League of Women Voters	CW	Mr.	Earl	Hamlin
7	Education	Alameda County Office of Education	CW	Ms.	Unique S.	Holland
8	Civil Rights/Env./Social Justice/Faith-based Adv.	Urban Habitat	CW	Ms.	Lindsay S.	Imai Hong
9	Alameda CTC Community Advisory Committee	Alameda CTC CAC	CW	Dr.	Roop	Jindal
10	Education	Oakland Unified School District, Board of Education	North	Mr.	David	Kakishiba
11	Alameda CTC Community Advisory Committee	Alameda CTC CWC	CW	Ms.	JoAnn	Lew
12	Health	Davis Street Family Resource Center	Central	Ms.	Teresa	McGill
13	Civil Rights/Env./Social Justice/Faith-based Adv.	Genesis, and Corpus Christi Catholic Church (Piedmont)	North	Ms.	Gabrielle M.	Miller

**Alameda County Transportation Authority  
Community Advisory Working Group**

Category	Organization	Planning Area	Title	First Name	Last Name
14 CWC Organization	East Bay Bicycle Coalition	CW	Ms.	Elizabeth W.	Morris
15 Seniors/People with Disabilities	PAPCO	North	Ms.	Betty	Mulholland
16 Civil Rights/Env./Social Justice/Faith-based Adv.	United Seniors of Oakland and Alameda County (USOAC)	CW	Ms.	Eileen Y.	Ng
17 Civil Rights/Env./Social Justice/Faith-based Adv.	TransForm (Program Director)	CW	Ms.	Carli E.	Paine
18 CWC Organization	East Bay Economic Development Alliance	CW	Mr.	James W.	Paxson
19 CWC Organization	Sierra Club	CW	Ms.	Patrishia	Piras
20 Seniors/People with Disabilities	Alameda CTC PAPCO	East	Ms.	Carmen	Rivera-Hendrickson
21 CWC Organization	Alameda County Labor Council	CW	Mr.	Anthony R.	Rodgers
22 Business	Board of Director for the City of Fremont Chamber of Commerce ElderCare (Fremont, CA)	South	Dr.	Raj	Salwan
23 Civil Rights/Env./Social Justice/Faith-based Adv.	Ponderosa Squar Homeowners Association (Fremont, CA)	South	Ms.	Diane	Shaw
24 Alameda CTC Community Advisory Committee	Alameda CTC PAPCO	CW	Ms.	Sylvia	Stadmire
25 Alameda CTC Community Advisory Committee	Alameda CTC BPAC	CW	Ms.	Midori	Tabata
26 Health	Alameda County Public Health Department	CW	Ms.	Pam L.	Willow
27 Education	Livermore Valley Joint Unified School District: works as substitute teacher and a volunteer in the	CW	Ms.	Beth A.	Wilson



# Technical Advisory Working Group (TAWG)

	Planning Area	First Name	Last Name	Title	Business Name
1	North	Alex	Amoroso	Principal Planner, Planning Department	City of Berkeley
2	North	Aleida	Andrino-Chavez	Transportation Planner	City of Albany
3	South	Marisol	Benard	Even Start Program Manager	New Haven Unified School District
4	East	Jaimee	Bourgeois	Senior Civil Engineer (Traffic)	City of Dublin
5	North	Ann	Chaney	Director of Community Development	City of Albany
6	South	Mintze	Cheng	Public Works Director	City of Union City
7	Central	Keith R.	Cooke	Principal Engineer	City of San Leandro
8	South	Soren	Fajean	Senior Civil Engineer	City of Newark - Engineering Division
9	East	Jeff	Flynn	Planning Director	Livermore Amador Valley Transit Authority
10	Central	Don	Frascinella	Transportation Manager, PWD	City of Hayward
11	East	Susan	Frost	Principal Planner	City of Livermore
12	South	Jim	Gannon	Manager of Transportation Services	Fremont Unified School District
13	East	Robin	Giffin	Senior Planner	City of Pleasanton
14	CW	Mike	Gougherty	Transportation/Environmental Planner/Analyst	Water Emergency Transportation Authority
15	South	Terrence	Grindall	Community Development Director	City of Newark

# Technical Advisory Working Group (TAWG)

	Planning Area	First Name	Last Name	Title	Business Name
16	North	Diana	Keena	Associate Planner	City of Emeryville
17	Central	Paul	Keener	Senior Transportation Planner	Alameda County Public Works Agency
18	North	Obaid	Khan	Supervising Civil Engineer	City of Alameda - Public Works Department
19	South	Wilson	Lee	Transit Manager	City of Union City
20		Tom	Liao	Planning and Housing Manager	City of San Leandro
21	South	Joan	Malloy	Economic and Community Development Director	City of Union City
22	CW	Gregg	Marrama	Department Manager	BART
23	CW	Val	Menotti	Acting Department Manager, Planning Principal Planner, PWD	BART
24	North	Matt	Nichols		City of Berkeley
25	Central	Erik J.	Pearson	Senior Planner, PWD	City of Hayward
26	South	James	Pierson	Transportation & Operations Director	City of Fremont
27		Brian	Schmidt	Director of Planning, Programming and Operations	ACE Rail
28	North	Peter	Schultze-Allen	Environmental Analyst, PWD	City of Emeryville
29	South	Jeff	Schwob	Planning Director	City of Fremont
30	North	Tina	Spencer	Director of Service Development and Planning	AC Transit

# Technical Advisory Working Group (TAWG)

	Planning Area	First Name	Last Name	Title	Business Name
31	North	Iris	Starr	Division Manager of Infrastructure Plans and Programming	City of Oakland
32	East	Mike	Tassano	City Traffic Engineer	City of Pleasanton
33	CW	Lee	Taubeneck	Deputy District Director - District 4	Caltrans
34	North	Andrew	Thomas	Planning Services Manager	City of Alameda
35	North	Jim	Townsend	Trails Development Program Manager	East Bay Regional Park District (EBRPD)
36	East	Bob	Vinn	Assistant City Engineer	City of Livermore
37	East	Marnie	Waffle	Senior Planner	City of Dublin
38	North	Bruce	Williams	Senior Transportation Planner	City of Oakland
39	CW	Stephen	Yokoi	Office Chief, Office of Regional Planning - District 4	Caltrans
40	Central	Karl	Zabel	Operations and Development Supervisor	Hayward Area Recreation and Park District (HARD)
Alt	South	Farooq	Azim	Principal Civil Engineer	City of Union City
Alt	South	Carmela	Campbell	Planning Manager	City of Union City
Alt	North	Cory	LaVigne	Director of Service Development and Planning	AC Transit
Alt	Central	Larry	Lepore	Park Superintendent	Hayward Area Recreation and Park District (HARD)

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SEARCH →

## ALAMEDA CTC

### CWTP/TEP Project

#### Related Content

- [About CWTP](#)
- [About TEP](#)
- [CWTP/TEP Project](#)
- [CWTP/TEP Project Library](#)
- [How to Get Involved](#)
- [Online Survey](#)
- [Plan Development Committees](#)
- [Project Meetings and Meeting Documentation](#)
- [Project Schedule and Process](#)

#### Welcome to the Alameda County Transportation Planning Page!

Thank you for your interest in long-range planning for the future of our transportation system in Alameda County. Two major Plans are underway that guide future transportation improvements:

The [Alameda Countywide Transportation Plan \(CWTP\)](#) lays out a strategy for meeting transportation needs for all users in Alameda County. This plan includes projects and other improvements for: new and existing freeways, local streets and roads, public transit (paratransit, buses, rails, ferries) and facilities and programs to support bicycling and walking. Projects are required to be in the Countywide Transportation Plan to compete for funding on the regional, state and national level.

The [Transportation Expenditure Plan \(TEP\)](#) identifies the funding priorities for an extension of the existing Transportation Sales Tax, known as [Measure B](#). The TEP includes transportation infrastructure projects like roadway maintenance, bicycle, pedestrian, transit and paratransit improvements; and programs supporting biking, walking, transit and paratransit operations. The Transportation Expenditure Plan will be submitted to the voters of Alameda County for approval. If the plan appears on the 2012 ballot, as anticipated, it will a 2/3 majority to pass.

The [Countywide Bicycle and Pedestrian Plans](#) are currently being updated. Specific information about these efforts can found on the project website.



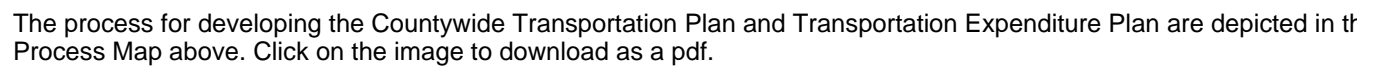
#### Transportation Plan Updates Underway

Alameda County Transportation Commission is currently updating the CWTP and developing the Transportation Expenditure Plan. A new sales tax measure is slated to be on the ballot in 2012. Currently, Measure B is a key source of funding for [transportation projects in Alameda County](#). Projects and programs for the TEP will be drawn from the CWTP.

To develop the Plans, Alameda CTC is working with a Steering Committee, Community Advisory Working Group and Technical Advisory Working Group. These [committees](#) include representatives from fifteen local jurisdictions, six transit operators, Caltrans District 4, the Port of Oakland, MTC and other community and agency stakeholders to identify and prioritize projects and programs.

#### Public input is important to this process

Learn how you can [participate in the planning process](#) and provide your input at essential project milestones.



**CITIZENS WATCHDOG COMMITTEE ISSUES FORM**

**Alameda County Transportation Commission (Alameda CTC)**  
**1333 Broadway, Suite 300**  
**Oakland, California 94612**  
**Voice: 510-893-3347 Fax: 510-893-6489**

The CWC is required to review all Measure B expenditures. This form allows formal documentation of potential issues of concern regarding expenditure of Measure B funds. A concern should only be submitted to the CWC if an issue is directly related to the potential misuse of Measure B funds or non-compliance with Alameda CTC agreements or the Expenditure Plan approved by voters. This form may be used only by acting CWC members.

**Date:**\_\_\_\_\_

**Name:**\_\_\_\_\_

**Email Address:**\_\_\_\_\_

**Governmental Agency of Concern** (Include name of agency and all individuals)

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**Agency's Phone Number:**\_\_\_\_\_

**Agency's Address:**\_\_\_\_\_

**City**\_\_\_\_\_ **Zip Code:**\_\_\_\_\_

**Which one of the following Measure B expenditures is this concern related to:**

(Please check one)

☐ Capital Project    ☐ Program    ☐ Program Grant    ☐ Administration

**Please explain the nature of your concern and how you became aware of it providing as much detail as you can, including the name of the project or program, dates, times, and places where the issues you are raising took place. (Use additional sheets of paper if necessary)**

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**PROCESS -**

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**PROTECTION -**

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**Action Taken -** Please list other parties or agencies you have contacted in an attempt to more fully understand this issue and any actions you yourself have taken.

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# OPEN & PUBLIC IV:

*A Guide to the Ralph M. Brown Act*

# ACKNOWLEDGEMENTS

The League thanks the following individuals for their work on this update to the original publication:

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# OPEN & PUBLIC IV

A GUIDE TO THE RALPH M. BROWN ACT



CH. 1: IT IS THE PEOPLE'S BUSINESS

CH. 2: LEGISLATIVE BODIES

CH. 3: MEETINGS

CH. 4: AGENDAS, NOTICES, AND  
PUBLIC PARTICIPATION

CH. 5: CLOSED SESSIONS

CH. 6: REMEDIES

OPEN & PUBLIC IV:  
A GUIDE TO THE RALPH M. BROWN ACT



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League of California Cities

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## FOREWORD

The goal of this publication is to explain the requirements of the Ralph M. Brown Act, California's open meeting law, in lay language so that it can be readily understood by local government officials and employees, the public and the news media. We offer practical advice—especially in areas where the Brown Act is unclear or has been the subject of controversy—to assist local agencies in complying with the requirements of the law.

A number of organizations representing diverse views and constituencies have contributed to this publication in an effort to make it reflect as broad a consensus as possible among those who daily interpret and implement the Brown Act. The League thanks the following organizations for their contributions:

Association of California Healthcare Districts  
Association of California Water Agencies  
California Association of Sanitation Agencies (CASA)  
California Attorney General – Department of Justice  
City Clerks Association of California  
California Municipal Utilities Association  
California Redevelopment Association  
California School Boards Association  
California Special Districts Association  
California State Association of Counties  
Community College League of California  
California First Amendment Project  
California Newspaper Publishers Association  
Common Cause  
League of Women Voters of California

This publication is current as of April 2007. Updates to the publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengov](http://www.cacities.org/opengov).

This publication is not intended to provide legal advice. A public agency's legal counsel is responsible for advising its governing body and staff and should always be consulted when legal issues arise.

### ***To improve the readability of this publication:***

- Most text will look like this.
- Practice tips are in the margins
- **Hypothetical examples are printed in blue**
- Frequently asked questions, along with our answers, are in shaded text

Additional copies of this publication may be purchased by visiting CityBooks online at [www.cacities.org/store](http://www.cacities.org/store).

# CHAPTER 1:

## IT IS THE PEOPLE'S BUSINESS



THE RIGHT OF ACCESS

BROAD COVERAGE

NARROW EXEMPTIONS

PUBLIC PARTICIPATION  
IN MEETINGS

CONTROVERSY

BEYOND THE LAW—GOOD  
BUSINESS PRACTICES

ACHIEVING BALANCE

HISTORICAL NOTE

# CHAPTER 1:

## IT IS THE PEOPLE'S BUSINESS



### ■ THE RIGHT OF ACCESS

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

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

*"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."*<sup>1</sup>

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

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

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

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

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

#### **Practice Tip:**

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



## ■ BROAD COVERAGE

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

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any medium of communication or device by which a majority of a legislative body develops “a collective concurrence as to action to be taken.” They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an Internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, personal digital assistants, or cellular telephones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

## ■ NARROW EXEMPTIONS

The express purpose of the Brown Act is to assure that local government agencies conduct the public’s business openly and publicly. Courts and the Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.<sup>4</sup>

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

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

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for collective action or discussion.<sup>5</sup>

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

### ***Practice Tip:***

Think of the government’s house as being made of glass. The curtains may be drawn only to further the public’s interest.



## ■ PUBLIC PARTICIPATION IN MEETINGS

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

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

## ■ CONTROVERSY

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

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

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

## ■ BEYOND THE LAW – GOOD BUSINESS PRACTICES

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

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

### **Practice Tip:**

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



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

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

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

## ■ ACHIEVING BALANCE

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

On the one hand, there must be adequate notice of what discussion and action is to occur during a meeting; on the other there must be a normal degree of spontaneity in the dialogue between elected officials and their constituents.

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

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

## ■ HISTORICAL NOTE

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

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

### ***Practice Tip:***

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



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

Assembly Member Brown served in the Assembly for 19 years starting in 1942, the last three years as its Speaker. He then became an appellate court justice. But, he is best known for the open meeting law, which carries his name.

---

**Endnotes**

- 1 California Government Code section 54950
- 2 California Constitution, Art. 1, section 3 (b)(1)
- 3 California Government Code section 54953 (a)
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the state’s Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2)
- 5 *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533

**Updates to this publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengov](http://www.cacities.org/opengov). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).**

# CHAPTER 2:

## LEGISLATIVE BODIES



WHAT IS A "LEGISLATIVE BODY"  
OF A LOCAL AGENCY?

WHAT IS NOT A "LEGISLATIVE BODY"  
FOR PURPOSES OF THE BROWN ACT?



# CHAPTER 2:

## LEGISLATIVE BODIES



The Brown Act applies to the legislative bodies of local agencies. It defines “legislative body” broadly to include just about every type of decision-making body of a local agency.<sup>1</sup>

### ■ WHAT IS A “LEGISLATIVE BODY” OF A LOCAL AGENCY?

A “legislative body” includes:

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

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

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

- **Appointed bodies**—whether permanent or temporary, decision-making or advisory—such as planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and “blue ribbon committees” created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

#### **Practice Tip:**

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

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information, they would have been exempt from the Brown Act.<sup>8</sup>

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.<sup>9</sup> Even if comprised of less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, function over form controls. For example, a statement by the legislative body that “the advisory committee shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.<sup>10</sup> “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.<sup>11</sup>
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.<sup>12</sup> These include some nonprofit corporations created by local agencies.<sup>13</sup> If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.<sup>14</sup> When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.<sup>15</sup>

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

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

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

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

- **Certain kinds of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.<sup>16</sup>

## ■ WHAT IS NOT A “LEGISLATIVE BODY” FOR PURPOSES OF THE BROWN ACT?

- A temporary advisory committee **composed solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.<sup>17</sup> Temporary committees are sometimes called *ad hoc*

### **Practice Tip:**

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

committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.<sup>18</sup>

- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.<sup>19</sup>

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

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

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.<sup>20</sup>
- County central committees of political parties are also not Brown Act bodies.<sup>21</sup>

#### Endnotes

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 2 California Government Code section 54951
- 3 California Government Code section 54951. *But see:* Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799
- 9 California Government Code section 54952(b)
- 10 79 Ops. Cal.Atty.Gen. 69 (1996)
- 11 *Frazier v. Dixon Unified School District* (1993) 18 Cal.App.4th 781.
- 12 California Government Code section 54952(c)(1)(B). The same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862; *see also:* 81 Ops.Cal.Atty.Gen. 281 (1998); 85 Ops.Cal.Atty.Gen. 55
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287
- 15 "The Brown Act," California Attorney General (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); *see also:* *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 19 56 Ops.Cal.Atty.Gen. 14 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 21 59 Ops.Cal.Atty.Gen. 162 (1976)

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# CHAPTER 3:

## MEETINGS



BROWN ACT MEETINGS

SIX EXCEPTIONS TO THE MEETING  
DEFINITION

COLLECTIVE BRIEFINGS

RETREATS OR WORKSHOPS OF  
LEGISLATIVE BODIES

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# CHAPTER 3:

## MEETINGS



The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "... any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."<sup>1</sup> The term "meeting" under the Brown Act is not limited to gatherings at which action is taken but includes deliberative gatherings as well.

### ■ BROWN ACT MEETINGS

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

- "Regular meetings" are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.<sup>2</sup>
- "Special meetings" are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda, under the Brown Act's notice
- "Emergency meetings" are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little
- "Adjourned meetings" are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.<sup>5</sup>

### ■ SIX EXCEPTIONS TO THE MEETING DEFINITION

The Brown Act creates six exceptions to the meeting definition: <sup>6</sup>

#### *Individual Contacts*

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

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

### ***Conferences***

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

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



### ***Community Meetings***

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

*“I see we have four distinguished members of the city council at our meeting tonight,” said the chair of the Environmental Action Coalition.*

*“I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?”*

*The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority engages in a collective deliberation process during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

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

**A.** Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.

### ***Other Legislative Bodies***

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.<sup>7</sup> Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency’s subject matter jurisdiction. This exception allows, for example,

a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

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

- Q.** The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?
- A.** *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*
- Q.** The members then proceed upstairs to the office of their local assemblymember to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?
- A.** *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the assemblymember.*

### ***Standing Committees***

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).<sup>8</sup>

- Q.** The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?
- A.** *She may attend, but only as an observer; she may not participate.*

### ***Social or Ceremonial Events***

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

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

### **■ COLLECTIVE BRIEFINGS**

None of these six exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.





## ■ RETREATS OR WORKSHOPS OF LEGISLATIVE BODIES

There is consensus among local agency attorneys that gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or on team building and group dynamics.<sup>9</sup>

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

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

## ■ SERIAL MEETINGS

One of the most frequently asked questions about the Brown Act involves serial meetings. Such meetings at any one time involve only a portion of a legislative body, but eventually involve a majority.

The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision-making. Except for teleconferencing discussed below, the Brown Act specifically prohibits "any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body."<sup>10</sup>

The serial meeting may occur by either a "daisy-chain" or a "hub-and-spoke" sequence. In the daisy-chain scenario Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum and collective concurrence has been established. The hub-and-spoke process involves, for example, a staff member (the hub) communicating with members of a legislative body (the spokes) one-by-one for a decision on a proposed action,<sup>11</sup> or a chief executive officer briefing a majority of redevelopment agency members prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague or appropriate staff about local agency business. However, if several one-on-one meetings or conferences leads to a "collective concurrence as to action to be taken" among a majority, the Brown Act has been violated. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.<sup>12</sup>

On the other hand, a unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.<sup>13</sup> Such a memo, however, may be a public record.<sup>14</sup>

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

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

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



### **Practice Tip:**

Staff must exercise care not to achieve a collective concurrence by not disclosing the other members' views and positions when briefing legislative body members.

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

*Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff and news media against revealing such positions of others.*

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

*A recent case supports the consensus among local agency attorneys that staff briefings of legislative body members are allowed if staff is not used as a conduit for developing collective concurrence on the matter, and if during such briefings staff does not disclose the views and positions of other members.<sup>15</sup> Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a collective concurrence among the majority of the legislative body.*

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

"Glad to be of assistance," replied the planning director. "Any idea what the other council members think of the problem?"

*The planning director should not ask, and the member should not answer. A one-on-one meeting that involves a member of a legislative body takes a step toward collective concurrence if either person reveals or discusses the views of other members.*

- Q.** The agency's web-site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** Yes, because it is a technological device that may serve to allow for the development of a collective concurrence as to action to be taken.
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply to all" button that may inadvertently result in a Brown Act violation.

## ■ INFORMAL GATHERINGS

Often members are tempted to mix business with pleasure—for example, by holding a post meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.<sup>16</sup> A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.

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

*A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues. But it is the kind of situation that should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.*

- Q.** The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?
- A.** *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

## ■ TECHNOLOGICAL CONFERENCING

In an effort to keep up with information age technologies, the Brown Act now specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.<sup>17</sup>

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."<sup>18</sup> In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following specific requirements:<sup>19</sup>

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction (except health authorities may count members located outside of their jurisdiction for up to 50% of the quorum as long as the notice and agenda for the meeting include the teleconference number and access code).
- Additional teleconference locations may be made available for the public.



### **Practice Tip:**

Before teleconferencing a meeting, legal counsel for the local agency should be consulted.

- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable.
- Agendas must be posted at each teleconference location, even if a hotel room or a residence.
- Each teleconference location must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

- Q.** A member on vacation desires to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?
- A.** *She may not participate or vote because she is not in a noticed and posted teleconference location.*

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

## **■ LOCATION OF MEETINGS**

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.<sup>20</sup>

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is to:

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

- Q.** The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?
- A.** *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be able to attend.*

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



- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.<sup>21</sup>

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.<sup>22</sup> A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.<sup>23</sup>

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.<sup>24</sup>

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**Endnotes:**

- 1 California Government Code section 54952.2(a)
- 2 California Government Code section 54954(a)
- 3 California Government Code section 54956
- 4 California Government Code section 54956.5
- 5 California Government Code section 54955
- 6 California Government Code section 54952.2(c)
- 7 California Government Code section 54952.2(c)(4)
- 8 California Government Code section 54952.2(c)(6)
- 9 “The Brown Act,” California Attorney General (2003), p. 10
- 10 California Government Code section 54952.2(b)
- 11 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 12 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 14 California Government Code section 54957.5(a)
- 15 *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533
- 16 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 17 California Government Code section 54953(b)(1)
- 18 California Government Code section 54953(b)(4)
- 19 California Government Code section 54953
- 20 California Government Code section 54954(b)
- 21 California Government Code section 54954(b)(1)-(7)
- 22 California Government Code section 54954(c)
- 23 California Government Code section 54954(d)
- 24 California Government Code section 54954(e)

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# CHAPTER 4:

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



AGENDAS FOR REGULAR MEETINGS

MAILED AGENDA UPON WRITTEN REQUEST

NOTICE REQUIREMENTS FOR SPECIAL MEETINGS

NOTICES AND AGENDAS FOR ADJOURNED AND  
CONTINUED MEETINGS AND HEARINGS

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MEETINGS

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NOTICE REQUIREMENTS FOR TAX OR  
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NON-AGENDA ITEMS

RESPONDING TO THE PUBLIC

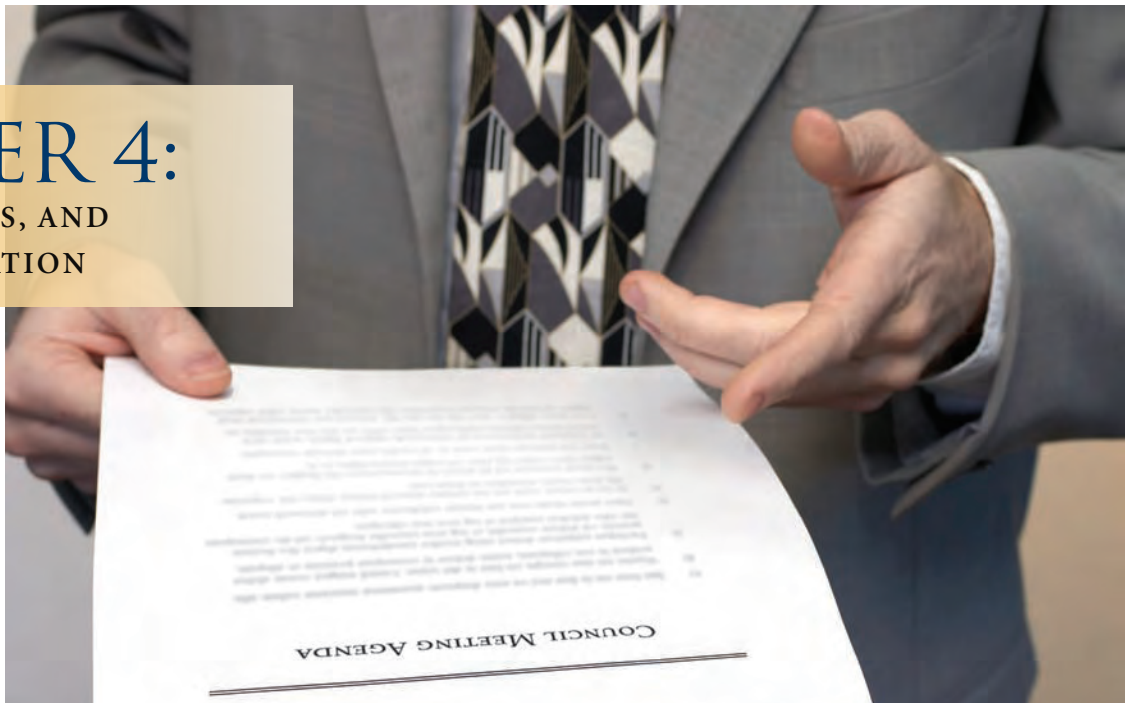
THE RIGHT TO ATTEND MEETINGS

RECORDS AND RECORDINGS

THE PUBLIC'S PLACE ON THE AGENDA

# CHAPTER 4:

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if no one knows about the meeting.

### ■ AGENDAS FOR REGULAR MEETINGS

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

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”<sup>1</sup> The California Attorney General has interpreted this requirement to require posting in locations accessible to the public 24 hours a day during the 72-hour period.<sup>2</sup> Posting may also be made on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.<sup>3</sup> However, posting an agenda on an agency’s website alone is inadequate since there is no universal access to the internet. The agenda must state the meeting time and place and must contain “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.”<sup>4</sup>

#### **Practice Tip:**

Putting together a meeting agenda requires careful thought.

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

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

Are these descriptions adequate?

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

**Q.** The agenda includes an item entitled “City Manager’s Report,” during which time the City Manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

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

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

### ■ MAILED AGENDA UPON WRITTEN REQUEST

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.<sup>5</sup>



### ■ NOTICE REQUIREMENTS FOR SPECIAL MEETINGS

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

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda—with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act’s safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements. The special meeting notice must also be posted at least 24 hours prior to the special meeting in a site freely accessible to the public. The body cannot consider business not in the notice.<sup>6</sup>

### ■ NOTICES AND AGENDAS FOR ADJOURNED AND CONTINUED MEETINGS AND HEARINGS

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.<sup>7</sup> If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced. A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.



A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.<sup>8</sup>

### ■ NOTICE REQUIREMENTS FOR EMERGENCY MEETINGS

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.<sup>9</sup> News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

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

### ■ EDUCATIONAL AGENCY MEETINGS

The Education Code contains some special agenda and special meeting provisions,<sup>10</sup> however, they are generally consistent with the Brown Act. An item is apparently void if not posted.<sup>11</sup> A school district must also adopt regulations to make sure the public can place matters affecting district business on meeting agendas and to address the board on those items.<sup>12</sup>

### ■ NOTICE REQUIREMENTS FOR TAX OR ASSESSMENT MEETINGS AND HEARINGS

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased general tax or assessment.<sup>13</sup> At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which public testimony may be given before the legislative body proposes to act on the tax or assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.<sup>14</sup>

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.<sup>15</sup> As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

### ■ NON-AGENDA ITEMS

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda.<sup>16</sup>

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

#### **Practice Tip:**

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



As seen in the above-described instances, the exceptions are narrow. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

**"I'd like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project," said chairman Jones.**

**"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule—believe it or not—and I'd like to keep it that way. Do I hear a motion?"**

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

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

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

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

## ■ RESPONDING TO THE PUBLIC

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

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back or to place a matter of business on the agenda for a subsequent meeting (subject to its own rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.<sup>17</sup> However, caution should be used to avoid any discussion or action on such items.

**Councilmember A:** I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street – are there problems with this project?

**City Manager:** The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.

**Councilmember B:** Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.



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

## ■ THE RIGHT TO ATTEND MEETINGS

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

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire or other document circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.<sup>18</sup>

No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry, or sex, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.<sup>19</sup> This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.<sup>20</sup>

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.<sup>21</sup>

Action by secret ballot, whether preliminary or final, is flatly prohibited.<sup>22</sup>

There can be no "semi-closed" meetings, which some members of the public are permitted to attend as spectators while others are not; meetings are either open or closed.<sup>23</sup>

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.<sup>24</sup>

## ■ RECORDS AND RECORDINGS

The public has the right to review agendas and other writings distributed to a majority of the legislative body. Except for privileged documents, those materials are public records and must be made available.<sup>25</sup> A fee or deposit may be charged for a copy of a public record.<sup>26</sup>

To ensure action is not taken on documents not available for public review, writings must be made public:

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

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is also subject to the Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.<sup>27</sup> The agency may impose its ordinary charge for copies.<sup>28</sup>



In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting in order to record the proceedings, absent a reasonable finding by the legislative body that recorders or cameras would persistently disrupt proceedings.<sup>29</sup>

A local agency cannot prohibit or restrict the public broadcast of its open and public meetings without a reasonable finding that the noise, illumination, or obstruction of view will be a “persistent” disruption.<sup>30</sup>

Finally, governing bodies can go beyond these minimal standards to require greater access to their meetings and to those of their appointed bodies.<sup>31</sup>

## ■ THE PUBLIC’S PLACE ON THE AGENDA

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body’s consideration of it.<sup>32</sup>

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

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

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But, the Brown Act provides no immunity for defamatory statements.<sup>33</sup>

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

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

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

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

### **Practice Tip:**

Public speakers cannot be compelled to give their name or address as a condition of speaking.

The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers’ viewpoints. The legislative body has the discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or it could be lengthened to allow additional time for discussion on a complicated matter.<sup>34</sup> The legislative body may request that persons who wish to speak fill out speaker cards; however, because anonymous speech is protected by the constitution, this must be optional.

The public need not be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.<sup>35</sup>

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item but need not allow members of the public an opportunity to speak on nonagendized items.<sup>36</sup>

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### Endnotes

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327, 331-332 (1998)
- 3 88 Ops.Cal.Atty.Gen. 218 (2006)
- 4 California Government Code section 54954.2(a)(1)
- 5 California Government Code section 54954.1
- 6 California Government Code section 54956
- 7 California Government Code section 54955
- 8 California Government Code section 54955.1
- 9 California Government Code section 54956.5
- 10 Education Code sections 35144, 35145 and 72129
- 11 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 12 California Education Code section 35145.5
- 13 California Government Code section 54954.6
- 14 California Government Code section 54954.6(g)
- 15 See: Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 16 California Government Code section 54954.2(b)
- 17 California Government Code section 54954.2(a)(2)
- 18 California Government Code section 54953.3
- 19 California Government Code section 54961(a)
- 20 California Government Code section 54952.2(c)(2)
- 21 California Government Code section 54953(b)
- 22 California Government Code section 54953(c)
- 23 46 Ops.Cal.Atty.Gen. 34 (1965)
- 24 California Government Code section 54957.9
- 25 California Government Code section 54957.5
- 26 California Government Code section 54957.5
- 27 California Government Code section 54953.5(b)
- 28 California Government Code section 54957.5(c)
- 29 California Government Code section 54953.5(a)
- 30 California Government Code section 54953.6
- 31 California Government Code section 54953.7
- 32 California Government Code section 54954.3(a)
- 33 California Government Code section 54954.3(c)
- 34 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 35 California Government Code section 54954.3(a)
- 36 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengov](http://www.cacities.org/opengov). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

# CHAPTER 5:

## CLOSED SESSIONS



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# CHAPTER 5:

## CLOSED SESSIONS



The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter must be discussed in public. As an example, a board of police commissioners cannot generally meet in closed session, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.<sup>1</sup>

### ***Practice Tip:***

Meetings are either open or closed – there is no “in between.”

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session. Individuals who do not have an official role in advising the legislative body on closed session subject matters must be excluded from closed session discussions.<sup>2</sup>

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

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

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind.

In this chapter, the grounds for convening a closed session are called “exceptions,” because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, the Brown Act does not authorize closed sessions for general contract negotiations.

## ■ AGENDAS AND REPORTS

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption. An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.

The Brown Act supplies a series of fill-in-the-blank sample, agenda descriptions for various types of authorized closed sessions, which provide a “safe harbor” from legal attacks. These sample agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional drug cases, hospital boards of directors, and medical quality assurance committees.<sup>3</sup>

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.<sup>4</sup>

Following a closed session the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session.<sup>5</sup> The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.<sup>6</sup>

The Brown Act does not require minutes, including minutes of closed session. A confidential “minute book” may be kept to record actions taken at closed sessions.<sup>7</sup> If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.<sup>8</sup> A court may order the disclosure of minutes books for the court’s review if a lawsuit makes sufficient claims of an open meeting violation.

### ***Practice Tip:***

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

### ***Practice Tip:***

Give close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session.



## ■ LITIGATION

There is an attorney/client relationship, and legal counsel may use it for privileged written and verbal communications—outside of meetings—to members of the legislative body. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.<sup>9</sup>

The Brown Act expressly authorizes closed sessions to discuss what is considered litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is a party.<sup>10</sup> The Attorney General believes that if the agency's attorney is not a participant, a litigation closed session cannot be held.<sup>11</sup> In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda, in order to be certain that it is being done properly.

Litigation that may be discussed in closed session includes the following three types of matters:

### ***Existing litigation***

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has

#### ***Practice Tip:***

Protection of the attorney/client privilege cannot by itself be the reason for a closed session.

- Q.** May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?
- A.** *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or to consider alternatives for resolution of the case. Generally an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation that requires actions that are subject to public hearings cannot be approved in closed session.<sup>12</sup>

### ***Threatened litigation against the local agency***

Closed sessions are authorized for legal counsel to inform the legislative body of specific facts and circumstances that suggest that the local agency has significant exposure to litigation. The Brown Act lists six separate categories of such facts and circumstances.<sup>13</sup> The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff.

### ***Initiation of litigation by the local agency***

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

In certain cases, the circumstances and facts justifying the closed session must be publicly noticed on the agenda or announced at an open meeting. Before holding a closed session under the pending litigation exception, the legislative body must publicly state which of the three basic situations apply. It may do so simply by making a reference to the posted agenda.

Certain actions must be reported in open session at the same meeting following the closed session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person. Each agency attorney should be aware of and should make other disclosures that may be required in specific instances.

## ■ REAL ESTATE NEGOTIATIONS

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange,

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

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

or lease of real property by or for the local agency. A “lease” includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body’s negotiator on price and terms of payment.<sup>14</sup> Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.<sup>15</sup>

The agency’s negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiator, the real property that the negotiations may concern and the names of the persons with whom its negotiator may negotiate.<sup>16</sup>

After real estate negotiations are concluded, the approval of the agreement and the substance of the agreement must be reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval as soon as informed of it. Once final, the substance of the agreement must be disclosed to anyone who inquires.

**“Our population is exploding, and we have to think about new school sites,” said Board Member Baker.**

**“Not only that,” interjected Board Member Charles, “we need to get rid of a couple of our older facilities.”**

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

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





## ■ PUBLIC EMPLOYMENT

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.”<sup>17</sup> The purpose of this exception – commonly referred to as the “personnel exception” – is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.<sup>18</sup> The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.<sup>19</sup> That authority may be delegated to a subsidiary appointed body.<sup>20</sup>

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session. If the employee is not given notice, any disciplinary action is null and void.<sup>21</sup>

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel

- Q.** Must 24 hours’ notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?
- A.** *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

### **Practice Tip:**

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

performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.<sup>22</sup>

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.<sup>23</sup> An incorrect agenda description can result in invalidation of an action and much embarrassment.

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.<sup>24</sup> Action on individuals who are not “employees” must also be public—including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.



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

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session. Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.<sup>25</sup> However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.<sup>26</sup>

**"I have some important news to announce," said Mayor Jones. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months' severance pay."**

**"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**

*This may be an improper use of the personnel closed session if the Council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

**Q.** The school board is meeting in closed session to evaluate the superintendent and to consider giving her a pay raise. May the superintendent attend the closed session?

**A.** *The superintendent may attend the portion of the closed session devoted to her evaluation, but may not be present during discussion of her pay raise. Discussion of the superintendent's compensation in closed session is limited to giving direction to the school board's negotiator. Also, the clerk should be careful to notice the closed session on the agenda as both an evaluation and a labor negotiation.*

## ■ LABOR NEGOTIATIONS

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

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,<sup>27</sup> on employee salaries and fringe benefits for both union and non-union employees. For represented employees, it may also consider working conditions that by law require negotiation. These sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

### **Practice Tip:**

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

### **Practice Tip:**

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

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.<sup>28</sup>

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.<sup>29</sup> The labor sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees. For purposes of this prohibition, an “employee” includes an officer or an independent contractor who functions as an officer or an employee. Independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

## ■ LABOR NEGOTIATIONS—SCHOOL AND COMMUNITY COLLEGE DISTRICTS

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

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

- (1) a negotiating session with a recognized or certified employee organization;
- (2) a meeting of a mediator with either side;
- (3) a hearing or meeting held by a fact finder or arbitrator; and
- (4) a session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.<sup>30</sup>

Public participation under the Rodda Act also takes another form.<sup>31</sup> All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.<sup>32</sup> The final vote must be in public.

## ■ OTHER EDUCATION CODE EXCEPTIONS

Student disciplinary meetings by boards of school districts and community college districts are governed by the Education Code. District boards may hold a closed session to consider the suspension or discipline

of a student, if a public hearing would reveal personal, disciplinary, or academic information about students contrary to state and federal pupil privacy law. The pupil’s parent or guardian may request an open meeting.

Final action concerning kindergarten through 12th grade students must be taken at a public meeting, and is a public record.<sup>33</sup> In the case of community colleges, only expulsions need be made public.

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.<sup>34</sup> Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.<sup>35</sup>



## ■ GRAND JURY TESTIMONY

A legislative body, including its members as individuals, may testify in private before a grand jury, either individually or as a group.<sup>36</sup> Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act, since the body would not be meeting to make decisions or reach a consensus on issues within the body's subject matter jurisdiction.

## ■ LICENSE APPLICANTS WITH CRIMINAL RECORDS

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.<sup>37</sup>

## ■ PUBLIC SECURITY

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.<sup>38</sup> Action taken in closed session with respect to such public security issues is not reportable action.

## ■ MULTIJURISDICTIONAL DRUG LAW ENFORCEMENT AGENCY

A joint powers agency formed to provide drug law enforcement services to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.<sup>39</sup>

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.<sup>40</sup>

## ■ HOSPITAL PEER REVIEW AND TRADE SECRETS

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.<sup>41</sup>

- One is to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
- The other allows district or municipal hospitals to hold closed sessions to discuss "reports involving trade secrets"—provided no action is taken.

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

### ***Practice Tip:***

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

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.<sup>42</sup>

**Practice Tip:**

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

■ **THE CONFIDENTIALITY OF CLOSED SESSION DISCUSSIONS**

It is not uncommon for agency officials to complain that confidential information is being “leaked” from closed sessions. The Brown Act prohibits the disclosure of confidential information acquired in a closed session by any person present and offers various remedies to address willful breaches of confidentiality.<sup>43</sup> It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.<sup>44</sup> Only the legislative body acting as a body may agree to divulge confidential closed session information; as regards attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.<sup>45</sup>

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long believed that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information received during a closed session regarding pending litigation,<sup>46</sup> though the opinion also concluded that a local agency may not go so far as to adopt an ordinance criminalizing public disclosure of closed session discussions,<sup>47</sup> making it difficult to plug closed session leaks.

The Brown Act now prescribes remedies for breaches of confidentiality. These include injunctive relief, disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.<sup>48</sup>

The duty of maintaining confidentiality, of course, must give way to the obligation to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, the Brown Act exempts from its prohibition against disclosure of closed session communications disclosure of closed session information to the district attorney or the grand jury due to a perceived violation of law, expressions of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action, and disclosing information that is not confidential.<sup>49</sup>

The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

**“I want the press to know that I voted in closed session against filing the eminent domain action,” said Council Member Arnold.**

**“Don’t settle too soon,” reveals Council Member Baker to the property owner, over coffee.  
“The city’s offer coming your way is not our bottom line.”**

*The first comment to the press is appropriate - the Brown Act requires that certain final votes taken in closed session be reported publicly.<sup>50</sup> The second comment to the property owner is not - disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

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## Endnotes

- 1 61 Ops.Cal.Atty.Gen. 220 (1978)
- 2 98 Ops.Cal.Atty.Gen. 1011 (1999)
- 3 California Government Code section 54954.5
- 4 California Government Code sections 54956.9 and 54957.7
- 5 California Government Code section 54957.1(a)
- 6 California Government Code section 54957.1(b)
- 7 California Government Code section 54957.2
- 8 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18702.1(c)
- 9 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 10 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 11 “The Brown Act,” California Attorney General (2003), p. 40
- 12 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 13 Government Code section 54956.9(b)
- 14 California Government Code section 54956.8
- 15 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904
- 16 California Government Code section 54956.8
- 17 California Government Code section 54957
- 18 63 Ops.Cal.Atty.Gen. 215 (1980); *but see: Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session).
- 19 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 20 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty.Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.
- 21 California Government Code section 54957
- 22 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87
- 23 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 24 California Government Code section 54957
- 25 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 26 California Government Code section 54957.1(a)(5)
- 27 California Government Code section 54957.6
- 28 57 Ops.Cal.Atty.Gen. 209 (1974)
- 29 California Government Code section 54957.1(a)(6)
- 30 California Government Code section 3549.1
- 31 California Government Code section 3540
- 32 California Government Code section 3547
- 33 California Education Code section 48918
- 34 California Education Code section 72122
- 35 California Education Code section 60617
- 36 California Government Code section 54953.1
- 37 California Government Code section 54956.7

- 38 California Government Code section 54957
- 39 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354
- 40 California Government Code section 54957.8
- 41 California Government Code section 54962
- 42 California Health and Safety Code section 32106
- 43 Government Code section 54963; *Harron v. Bonilla* (2005) 125 Cal.App.4th 738
- 44 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; *see also*: California Government Code section 54963
- 45 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 46 80 Ops.Cal.Atty.Gen. 231 (1997)
- 47 76 Ops.Cal.Atty.Gen. 289 (1993)
- 48 California Government Code section 54963
- 49 California Government Code section 54957
- 50 California Government Code section 54957.1

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# CHAPTER 6:

## REMEDIES



INVALIDATION

CIVIL ACTION TO PREVENT  
FUTURE VIOLATIONS

COSTS AND ATTORNEY'S FEES

CRIMINAL COMPLAINTS

VOLUNTARY RESOLUTION

# CHAPTER 6:

## REMEDIES



Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

### ■ INVALIDATION

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Act.<sup>1</sup> Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law;
- Those involving sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.

Before filing a court action seeking invalidation, a person who believes a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action, the nature of the claimed violation, and the "cure" sought. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54952.2, which defines "meetings".<sup>2</sup> The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days.



The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed. The Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and to start over.

Although just about anyone has standing to bring an action for invalidation<sup>3</sup>, the challenger must show prejudice as a result of the alleged violation.<sup>4</sup> An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.<sup>5</sup>

## ■ CIVIL ACTION TO PREVENT FUTURE VIOLATIONS

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.<sup>6</sup> Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.<sup>7</sup>

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

## ■ COSTS AND ATTORNEY'S FEES

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. One court has held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.<sup>8</sup> When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorneys fees will be awarded against the agency if a violation of the Act is proven.

An attorney fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.<sup>9</sup>

## ■ CRIMINAL COMPLAINTS

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.<sup>10</sup>

A criminal violation has two components. The first is that there must be an overt act—a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.<sup>11</sup>

### **Practice Tip:**

A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options.



### **Practice Tip:**

If a violation of the Brown Act is proven, attorney's fees will likely be awarded.

### Practice Tip:

Training and exercising good judgment can help avoid Brown Act conflicts.

“Action taken” is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.<sup>12</sup> If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.<sup>13</sup> In fact, criminal liability is triggered by a member’s participation in a meeting in violation of the Brown Act—not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member “to deprive the public of information to which the member knows or has reason to know the public is entitled” by the Brown Act.<sup>14</sup>

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies’ adherence to the requirements of the law.

## VOLUNTARY RESOLUTION

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. Occasionally the district attorney or even the grand jury becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

### Endnotes

- 1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); and 54956 (special meetings). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies.
- 2 California Government Code section 54960.1 (b) and (c)(1)
- 3 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310
- 4 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547
- 5 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109
- 6 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 7 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324
- 8 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal.App.4th 1313
- 9 California Government Code section 54960.5
- 10 California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 11 California Government Code section 54959
- 12 California Government Code section 54952.6
- 13 61 Ops.Cal.Atty.Gen.283 (1978)
- 14 California Government Code section 54959

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# LOZANO SMITH

*Partnering for Excellence in Education and Government*

## CLIENT NEWS BRIEF

No. 30

August 2008

### LEGISLATURE AMENDS THE BROWN ACT AND PUBLIC RECORDS ACT

The Governor recently signed Senate Bill 1732 (“SB 1732”), which makes certain changes to the Ralph M. Brown Act (“Brown Act”) and the California Public Records Act (“CPRA”). These changes will go into effect on January 1, 2009.

The Brown Act is California’s open meeting law, and generally requires all meetings of legislative bodies to be open to the public, except for certain authorized closed sessions. Currently, the Brown Act prohibits “any use of direct communication, personal intermediaries, or technological devices by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.” (Gov. Code § 54952.2.) This provision of the Brown Act was addressed in Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533 (“Wolfe”). The Wolfe court held that a series of individual meetings by members of the legislative body, or communication through an intermediary, does not violate the Brown Act so long as such communication does not result in a collective concurrence as to action to be taken on an item by the legislative body.

SB 1732 is intended to supersede the holding in Wolfe. In enacting SB 1732, the legislature expressed its disapproval of the Wolfe court’s decision that only serial meetings resulting in a collective concurrence are prohibited, and expressed its intent to also prohibit the process of developing a collective concurrence. As a result, amended Government Code section 54952.2, subdivision (b)(1), prohibits a majority of the members of a legislative body, outside a public meeting, from using a series of communications of any kind, directly or through intermediaries, “to discuss, deliberate, or take action” on any item of business within its jurisdiction. However, the Legislature also added subdivision (b)(2) to the amended Government Code section 54952.2, which provides that this change in the law shall not prohibit public agency employees or officials from engaging in separate conversations or communications with members of a legislative body outside of a meeting to answer questions or provide information regarding a matter, as long as that employee or official does not communicate a member’s comments or position on a matter to any other member.

SB 1732 also adds Government Code section 6252.7 to the CPRA. This new section provides that when members of a legislative body are authorized to access a writing of the body or the local agency, the local agency “shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.”

Therefore, a local agency cannot discriminate between or among members of its legislative body with regard to providing access to a writing of the legislative body or the agency. If one member of a legislative body is provided access to a document, all other members of the legislative body must be provided equal access.

SB 1732 emphasizes the Legislature's concern that all discussion between the majority of the members of a public agency's legislative body regarding agency business takes place only in meetings open to the public, and that public records be equally available to members of the legislative body. If you have any questions regarding these changes, or the Brown Act or CPRA in general, please contact any of our six statewide offices.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

**N**

*Written by Maria DeLeon (mdeleon@lozanosmith.com), an associate in our San Ramon office,  
and Scott Cross (scross@lozanosmith.com), a shareholder,  
in our Fresno office.*

Alameda County Transportation Commission  
Action Items

Commission Meeting Date	Item Title	Item #	Item Description / Staff Recommendation	Motion	2nd	Vote
22-Jul-10	Approval of Designation of the Existing ACTIA and ACCMA Executive Directors as Interim Co-Executive Directors	1	The Commission approved to designate the existing Executive Directors of ACTIA and ACCMA as interim co-executive directors of the Commission, to serve until an executive director is hired for the Alameda CTC.	Henson	Reid	23-0
	Adoption of the Administrative Code	2	The Commission approved the adoption of the Administrative Code with changes to Section 4.5.	Harper	Starosciak	23-0
	Approval of the Transit Agency Fees	3	The Commission approved the Ad Hoc Committee on Merger's recommendations to assess AC Transit and BART and Alameda CTC fee.	Haggerty	Sbranti	23-0
	Appoint/Reappoint Countywide Transportation Plan Update and Sales Tax Reauthorization Steering Committee Members	4	Staff recommend that the Commission appoint and/or reappoint members of the Countywide Transportation Plan Update and Sales Tax Reauthorization Steering Committee.	Kamena	Lai-Bitker	24-0
	ACCMA Executive Director's Report	5.2	Staff informed the Commission that the ACCMA will submit to the register of voters the vehicle registration fee on July 23. The Commission asked if the ballot measure states that the money will stay local. The Commission authorized staff to add the word local if it's not on the ballot.	Kaplan	Javandel	25-0
	Approval of Consent Calendar	6.1	Approval of ACTIA Board Meeting Minutes of June 24, 2010	Haggerty	Henson	25-0
		6.2	Approval of ACCMA Board Meeting Minutes, June 24, 2010			
		6.3.1	Telegraph Avenue Corridor Bus Rapid Transit - Approval of Measure B Allocation to the PE/Environmental Phase and Approval of Amendment No. 4 to the PE/Environmental Project Specific Funding Agreement with AC Transit			
		6.3.2	East Bay Greenway Project - Approval of the Consultant Shortlist and Authorization to Interview, Negotiate and Execute a Contract with the Top-Ranked Firm for Engineering, Environmental Clearance and Implementation Strategy Services			
		6.3.3	Measure B Capital Projects - I-880/Mission Blvd (Rt 262) Interchange Reconstruction and I-880 to Mission Blvd East-West Connector - Update on Funding Plans			
		6.4.1	Approval of Final Countywide Safe Routes to Schools Program.			
		6.4.2	Approval of Contract Extension for Executive Director			
		6.4.3	Year-End Detail of Investments for ACTA and ACTIA Funds			



**Alameda County Transportation Commission  
Action Items**

		6.5.1	Transportation and Land Use Program - Approval of Transit Oriented Development Quarterly Update			
		6.5.2	Approval of Safe Routes to School Final Program			
		6.6.1	Quarterly Investment Report			
		6.6.2	Quarterly SBE, LBE, and DBE Reports			
		6.6.3	Route 84/Ardenwood Blvd Park and Ride Lot Project - (Regional Measure 2 Project 29.5) - Acceptance of Construction Contract			
		6.6.4	I-680 Express Lane Project - Authorization for ACCMA Director to Negotiate and Execute Professional Services and Co-Location Contracts			
	<b>ACTIA ALF Legislative Program</b>	9.1	Staff recommended that the Commission support AB 2147 which was amended	Henson	Kamena	25-0
		10.1	The Commission approved the final CMA Block Grant program (Local Streets and Roads, Regional Bicycle Program, and County Transportation of Livable Communities)	Henson	Kamena	25-0
		10.2	The Commission approved the TFCA FY 2010/11 final program and to authorize the Executive Director to execute any necessary agreements related to this programming	Wieckowski	Freitas	25-0
		10.3.1	The Commission approved the programming of \$200,000 in STIP TE funds for LAVTA's Rideo Bus Project	Kamena	Haggerty	25-1
		10.3.2	The Commission approved to the following amendments to the Alameda County STIP project list: 1) Reprogram \$10 million in STIP funds from the I-880 Safety and Operational Improvements at 23rd/29th projects to the BART OAC project. 2) Reprogram \$10 million in STIP funds from the I-880 Mission Blvd. i/c projects to the BART OAC	Reid	Haggerty	25-1
9-Aug-10	<b>Report on Closed Session</b>	6	The Commission chose Arthur Dao as the Executive Director for the Alameda CTC			17-0
23-Sep-10	<b>Approval of Consent Calendar</b>	1A	Minutes of July 22, 2010	Henson	Reid	19-0
		1B	Minutes of August 9, 2010			
		1C	Approval of the 2010 LOS Monitoring Study Draft Report			
		1D	Review of the I-80 Integrated Corridor System Management Plan			
		1E	Review of the I-880 Corridor System Management Plan			
		1F	Approval of Transportation and Land Use Program: Revised Priority Development Area Reporting			
		1G	Review of Projects Proposed for the FY 2010/11 Transportation Funds for Clean Air (TFCA) Remaining Program Balance			



**Alameda County Transportation Commission  
Action Items**

		1H	East 14th Street/Hesperian Blvd/15th Street Intersection Improvements - Approval of Amendment No. 2 to the Project Specific Funding Agreement with the City of San Leandro for Right-of-Way Support and Capital Phase			
		1I	I-680/I-880 Cross Connector Studies - Approval of Amendment No. 3 to the Project Specific Funding Agreement with the Alameda County Congestion Management Agency for project scoping work			
		1J	Webster Street SMART Corridor - Approval of amendments to the funding agreements with the City of Alameda and MTC for the Webster Street SMART Corridor Project			
		1K	I-880 Southbound HOV Lane Widening Project - Approval of Resolution 10-004 Authorizing the Executive Director to Execute Contracts for I-880 Southbound HOV Lane Widening Project			
		1L	Update on Agency Insurance Coverage			
		1M	Professional Services Agreement with Management Partners - Approval of Amendment No. 1 to the Professional Services Agreement with Management Partners for administrative assistance during the transition of ACCMA and ACTIA to the new Alameda CTC			
		1N	Approval of Consultant Team for the Update of the CWTP and Development of the TEP			
		1O	Approval of appointments to the Community Advisory Committees			
		1P	Approval of ACTIA's semi-Annual LBCE/SLBE Report for the Period January 1, 2010 through June 30, 2010			
		3A	The Commission approved staff's recommendation on the following positions for measures on the November ballot: (a) support Alameda County Measure F; (b) oppose Proposition 23; © support Proposition	Lai-Bitker	Kaplan	26-0
		4A	The Commission approved Alameda CTC Resolution 10-003 accepting the public sponsor role for the Safe Routes to School Competitive Grant Application for the BikeMobile project, and to commit up to \$65,000 in matching funds for the \$500,000 request from the MTC SR2S competitive grant program.	Kamena	Javandel	27-0
		5A	The Commission approved ACTIA's FY 2009-10 Year-End Investment Report.	Haggerty	Blalock	27-0
		5A	Minutes of September 23, 2010			
		5B	Review of Draft Conformity Findings: Congestion Management Program (CMP) 2010	Henson	Kamena	23-0
		5C	Approval of Executive Director Entering Into Agreement to Implement TOD/TAP Studies and Plans			
28-Oct-10	Approval of Legislative Program					
	Approval of Alameda CTC Sponsorship for the SR2S Regional Application for the BikeMobile Project and Funding Strategy					
	Approval of Annual Investment Report (ACTIA)					
	Approval of Consent Calendar					

**Alameda County Transportation Commission  
Action Items**

	5D	Approval of Funding Assistance for the Alameda County Public Works Agency Stanley Boulevard Safety and Streetscape Project			
	5E	Approval of Project Study Report/Project Initiation Document (PSR/PID) Priority List for Alameda County: Current and Projected Work Program			
	5F	Approval of Programming of the FY 2010/11 TFCA Program Remaining Balance			
	5G	Approval of TFCA Program Expenditure Deadline Extension Requests: 1) BART - Electronic Bicycle Lockers, TFCA Projects 07ALA06 and 08ALA02. 2) Alameda CTC - Webster Street Corridor Enhancements, TFCA Project 08ALA01. 3) City of Berkeley - 9th Street Bicycle Boulevard, TFCA Project 08ALA03			
	5H	Approval of Monitoring Reports: State Transportation Improvement (STIP) Program at Risk Report Federal Surface Transportation/Congestion Mitigation and Air Quality STP/CMAQ) Program At Risk Report CMA Exchange Program Quarterly Status Report Transportation for Clean Air (TFCA) Program At Risk Report Transit Oriented Development Quarterly Progress Report, Transportation and Land Use Program			
	5I	Authorization to Extend Four Measure B Grant Agreement End Dates			
	5J	Acceptance of Semi-Annual Capital Projects Status Update			
	5K	ACCMA Quarterly Financial Overview			
	5L	Approval of ACCMA's Quarterly SBE, LBE and DBE Report for the Period of July 2010 through September 30, 2010			
	5M	Approval of Interagency Agreement Regarding Reimbursement and Allocation of Costs Associated with the Joint Operation of the Alameda County Transportation Commission (Alameda CTC), the Alameda County Transportation Improvement Authority (ACTIA) and the Alameda County Congestion Management Agency (CMA)			
	5N	Approval of appointments to the Community Advisory Committees			
	7B	The Commission approved a countywide approach for seeking input on and educating the Alameda County's elected bodies about SCS being developed by ABAG and MTC for the 2013 Regional Transportation Plan	Kaplan	Worthington	24-0
	9A	The Commission approved the First Quarter budget update for FY 2010-11	Henson	Blalock	24-0
	<b>Approval of Countywide Approach for Seeking Input on the Sustainable Communities Strategy (SCS)</b>				
	<b>Approval of FY 2010-2011 Budget - First Quarter Update</b>				

**Alameda County Transportation Commission  
Action Items**

	<p><b>Approval of a Comprehensive Benefits Program for Transition and Future Employees of the Alameda County Transportation Commission</b></p>	9B	The Commission approved a comprehensive benefit program for transition and new employees of the Alameda CTC.	Kamena	Blalock	20-3
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**FY 2010/2011 Calendar of CWC Meetings and Activities**

*CWC meets quarterly on the second Monday from 6:30 to 8:30 p.m. at the ACTIA offices*

**July 12, 2010 CWC Meeting**

- CWC Holds Public Hearing on CWC 8<sup>th</sup> Annual Report
- CWC Addresses Public Comments
- CWC Finalizes Annual Report and Publications
- Approval FY 10/11 Annual Calendar
- Approval of CWC Bylaws
- CWC Watch List for fiscal year 2010-2011 (Send letter to Jurisdictions reminding them of keeping CWC informed on projects/programs)

**November 8, 2010 CWC Meeting**

- ACTIA Audit and Internal Presentation
- CWC Annual Report Publication Update
- Update on Program Compliance Workshop
- Cost Allocation Policy
- Quarterly Alameda CTC Commission Action Items

**January 10, 2011 CWC Meeting**

- Sponsor Compliance Audits and Reports – Forwarded to CWC without Staff Analysis
- Committee Leadership Training
- Project Sponsor Presentations – if requested
- Quarterly Alameda CTC Commission Action Items

**March 14, 2011 CWC Meeting**

- Summary of Sponsor Audits/Programs – Report Card to CWC
- Approve Draft Annual Report Outline
- Budget Update
- Update on Board Actions Affecting Fiscal Year 2010/2011
- Quarterly Alameda CTC Commission Action Items
- Project Sponsor Presentations – if requested

**April 2011 CWC Annual Report Subcommittee Meeting**

- Prepare Draft Annual Report

**June 13, 2011 CWC Meeting**

- Finalize Draft Annual Report
- Election of Officers
- Final Strategic Plan
- Final Current Year Budget and ACTIA Budget for Fiscal Year 2011/2012
- Quarterly Alameda CTC Commission Action Items
- Project Sponsor Presentations – if requested

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Meeting Date: January 10, 2010

Alameda County Transportation Commission  
Citizen Watchdog Committee  
Roster and Attendance  
Fiscal Year 2010/2011

	Last	First	City	Appointed By	Term Began	Re-apptmt.	Term Expires	Mtgs Missed Since July '10*
1	Mr. Paxson, Chair	James	Pleasanton	EBEDA	Apr-01		N/A	0
2	Ms. Lew, Vice-Chair	Jo Ann	Union City	Alameda County Mayors' Conference, D-2	Oct-07	Feb-10	Feb-12	0
3	Ms. Belchamber	Pamela	Berkeley	Alameda County Mayor's Conference, D-5	Mar-09		Mar-11	0
4	Mr. Chavarin	Roger	Oakland	Alameda Labor Council AFL-CIO	Dec-08		N/A	0
5	Mr. Dubinsky	Peter	Fremont	Supervisor Gail Steele, D-2	Oct-10		Oct-12	0
6	Mr. Gallagher	Thomas	Pleasanton	Alameda County Mayors' Conference, D-1	Jan-08	Feb-10	Feb-12	1
7	Mr. Geen	Arthur B.	Oakland	Alameda County Taxpayers Association	Jan-01		N/A	1
8	Mr. Haussener	James	Castro Valley	Supervisor Nate Miley, D-4	Feb-10		Feb-12	0
9	Ms. Miriam	Hawley	Berkeley	League of Women Voters	Oct-10		Oct-12	0
10	Mr. Jensen	Erik	Oakland	East Bay Bicycle Coalition	May-10		May-12	0
11	Ms. Marr	Melody	San Leandro	Alameda County Mayors' Conference, D-3	Dec-09		Dec-11	1
12	Ms. Saunders	Harriette	Alameda	PAPCO	Jul-09		N/A	0
13	Mr. Stark	Dave	Pleasanton	Supervisor Scott Haggerty, D-1	Mar-08	Mar-10	Mar-12	1
14	Mr. Zika	George	Dublin	Alameda County Mayors' Conference, D-4	Feb-10		Feb-12	1
15	Mr. Zukas	Hale	Berkeley	Supervisor Keith Carson, D-5	Jun-09		Jun-11	0
16	Vacancy			Supervisor Alice Lai-Bitker, D-3				