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## 1976 Cal. AG LEXIS 22

Office of the Attorney General of the State of California

59 Ops. Cal. Atty. Gen. 123

### **CA Attorney General Opinions**

#### **Reporter**

1976 Cal. AG LEXIS 22 \*; 59 Ops. Cal. Atty. Gen. 123 \*\*

### **Opinion No. SO 74-20**

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March 11, 1976

### **Core Terms**

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reconsider, has, section, regional commission, state commission, etc, final date, res judicata, modify, administrative agency, final decision, was, general rule, doctrine, circle

### **Syllabus**

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[\*1]

COASTAL CONSERVATION COMMISSION -- RECONSIDERATION OF PREVIOUS, FINAL DECISION -- The California Coastal Zone Conservation Commission may not, on the basis of subsequently-received significant information, revoke or modify a permit previously issued or reconsider the previous denial of a permit. The only legal basis for reconsidering a previous, final decision on a permit matter is if the Commission, depending on specific facts in a case, lacked jurisdiction to make that decision.

**Request By:** EXECUTIVE DIRECTOR, CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION

### **Question**

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The Honorable Joseph E. Bodovitz, Executive Director, California Coastal Zone Conservation Commission, has requested an opinion on the following question:

Occasionally, information may come to the Commission respecting an application that it has previously approved or denied after a hearing, which information, had it been available earlier, could have resulted in a different conclusion by the Commission. The Commission wishes to know whether it can, on the basis of subsequently-received significant information, revoke or modify a permit previously issued, or reconsider the previous denial of a permit. Would the conclusion be different [\*2] if it is demonstrated that the information submitted, upon which the Commission relied, was intentionally or negligently misrepresented? Similarly, does the Commission retain jurisdiction when there has been an intentional or negligent failure to obtain or submit pertinent information?

The conclusion is:

The Coastal Commission may not, on the basis of subsequently-received significant information, revoke or modify a permit previously issued or reconsider the previous denial of a permit. The only legal basis for reconsidering a previous, final decision on a permit matter is if the Commission lacked jurisdiction to make that decision. Whether or not there is such a lack of jurisdiction depends upon the specific facts of each individual case.

We respectfully decline to render an opinion as to the effect of an intentional or negligent misrepresentation or failure to submit pertinent information, without a specific factual context.

**Opinion By:** EVELLE J. YOUNGER, Attorney General; Robert B. Keeler, Deputy

## Opinion

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### [\*\*123] ANALYSIS

#### I. The General Rule.

The general rule on the authority of an administrative agency to reconsider previous, final decisions is stated in 2 Cal. Jur. 3d at p. 483: "In the absence [\*3] of specific statutory authority, an administrative tribunal has no power to grant a rehearing or otherwise to reconsider a previous final decision. "

[\*\*124] This general rule has been followed numerous times by California courts. In the leading case of [Heap v. City of Los Angeles, 6 Cal. 2d 405 \(1936\)](#), the question presented was whether the Los Angeles Civil Service Commission, once having sustained the discharge of a city employee, "could thereafter vacate its findings and make another and contrary order." [6 Cal. 2d at 406](#). The Commission had followed the required procedure, and its resolution sustaining the employee's discharge was "final and conclusive." The court found that the Commission "had no jurisdiction to retry the question and make a different finding at a later time. The [city] charter gives no such grant of power, and it may not be implied." [6 Cal. 2d at 407](#).

In explaining why an administrative agency has no power to reconsider its previous final decisions in the absence of express statutory authorization, the Court posed a series of questions (6 Cal. 2d, [supra, at 407-08](#)): [\*4]

". . . . If the power were admitted, what procedure would govern its exercise? Within what time would it have to be exercised; how many times could it be exercised? Could a subsequent commission reopen and reconsider an order of a prior commission? And if the commission could reconsider an order sustaining a discharge, could it reconsider an order having the opposite effect, thus retroactively holding a person unfit for his position? These and many other possible questions which might be raised demonstrate how unsafe and impracticable would be the view that a commission might upset its final orders at its pleasure, without limitations of time, or methods of procedure. . . ."

The rule was further elaborated upon in [Olive Proration etc. Com. v. Agri. etc. Com., 17 Cal. 2d 204 \(1941\)](#):

"Where orders which relate to what may be rather broadly defined as individual rights are concerned, the question whether the administrative agency may reverse a particular determination depends upon the kind of power exercised in making the order and the terms of the statute under which the power was exercised. As to the first factor, almost without [\*5] exception, courts have held that the determination of an administrative agency as to the existence of a fact or status which is based upon a present or past group of facts, may not thereafter be altered or modified. [Citations.] As concisely stated by the New York Court of Appeals, officers of special and limited jurisdiction cannot sit in review of their own orders or vacate or annul them.' [Citation.] But if it is clear that the legislature intended that the agency should exercise a continuing jurisdiction with power to modify or alter its orders to conform to changing conditions, the doctrine of *res judicata* is not applicable. The determination depends upon the provisions of the particular statute." [17 Cal. 2d at 209](#).

This principle has often been reaffirmed. See, e.g., [Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control, 55 Cal. 2d 728 \(1961\)](#); [Pacheco v. Clark, 44 Cal. App. 2d 147 at 153 \(1941\)](#).

**[\*\*125]** There is no provision in the Coastal Zone Conservation Act which grants the Coastal Commission the authority to reconsider previous final decisions **[\*6]** on permit matters. Since the authority may not be implied, it must be concluded that the Commission has no such authority.

## II. When Is a Decision "Final"?

If the Coastal Commission has not been granted the power to reconsider previous final decisions, it becomes necessary to establish the date of finality of a decision of the regional and state commissions.

"That is in every case a question dependent for its answer upon the scheme of the law by which power is conferred." [Lindell Co. v. Board of Permit Appeals, 23 Cal. 2d 303 at 323 \(1943\)](#). We therefore turn to the provisions of the Coastal Act.

Section 27420 subdivision (c) of the Act states that regional commission action on a given permit application shall be taken within 60 days after the public hearing, "and such action shall become final after the tenth working day unless an appeal is filed within that time."

This section could imply either of two different meanings. First, it could mean that the date of finality of the regional commission decision is the tenth working day after the vote unless an appeal is filed within that time, leaving the regional commission free to reconsider its decision **[\*7]** within such ten-day period; but if an appeal is filed within that time, the regional commission's jurisdiction ceases at the time the appeal is filed, and it may not thereafter reconsider the matter. However, this interpretation would allow a dissatisfied party to interfere with the appeals procedure created by section 27423 merely by filing a petition for reconsideration with the regional commission before another party files an appeal with the state commission.

The more likely meaning to be implied from section 27420 subdivision (c) is merely that the section gives a petitioner ten working days within which to appeal the decision of the regional commission to the state commission. If an appeal is filed within that time, the state commission assumes jurisdiction over the permit application and it may affirm, modify or reverse the decision of the regional commission. Sec. 27423 subd. (b). If an appeal is not filed within the time limit, the decision of the regional commission becomes the "final" administrative agency decision in the matter. But the section does not extend the date of finality of the regional commission's decision, thus allowing the Commission to reconsider it before **[\*8]** it becomes final. This reading renders the meaning of the section consistent with its purpose -- to govern the time allowed within which an appeal must be filed, and nothing else.

This same reading should apply to section 27423 subdivision (b). This section states that if the state commission fails to act on an appeal from a regional commission within 60 days, "the regional commission's decision shall become final." That is, it shall become the final agency decision in the matter. The section does **[\*\*126]** not extend the date of finality of the regional commission decision to 60 days after the filing of the appeal with the state commission.

If sections 27420 subdivision (c) and 27423 subdivision (b) determine only the circumstances under which the regional commission decision shall become the final agency action in the matter, and do not affect the date of finality, there is no other section in the Act which specifies the date of finality of a regional commission decision. Nor is there any section which specifies the date of finality of a decision of the state commission. Section 27424 allows 60 days after the state commission decision has become final within which to file a petition **[\*9]** for a writ of mandate asking a court to review the decision. But this section does not affect the date of finality of a state commission decision any more than do the sections discussed above affect the date of finality of a regional commission decision.

In the absence of any statutory guidance on the question, the only remaining point at which to assign the date and time of the "finality" of a decision is when the regional commission chairman announces the vote tally on a given

application, or when the state commission chairman announces the tally on a given appeal. Before that time, the commissions cannot be said to have made a decision on a matter, and a commission member may reconsider and change his vote on the question if he wishes. See 14 Cal. Admin. Code § 13345 subdivision (c). But when the chairman announces the tally, the commission decision has been made and is thereafter "final." No votes may be changed after the tally is announced, and reconsideration is thereafter precluded.

### III. Some Narrow Exceptions to the General Rule.

Notwithstanding the general rule that an administrative agency may not reconsider previous, final decisions without explicit statutory authority, [\*10] the State Supreme Court has relaxed the rule under certain narrowly confined circumstances. In the case of [Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control, supra, 55 Cal. 2d 728](#), the question before the Court was whether the Alcoholic Beverage Control Appeals Board could be compelled to reconsider and reverse its decision dismissing petitioner's appeal from a Department of Alcoholic Beverage Control decision revoking petitioner's on-sale liquor license. The Court discussed the rule against reconsideration in the following terms:

"The doctrine of res judicata . . . is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy.' ( [Bernhard v. Bank of America, 19 Cal. 2d 807, 811 \[122 P.2d 892\]](#).) This policy can be as important to orderly administrative procedure as to orderly court procedure. Some administrative determinations, however, differ greatly from court decisions and greater flexibility is required in applying the doctrine of res judicata to them. (See Groner and Sternstein, Res [\*11] Judicata in Federal Administrative Law, 39 Iowa L. Rev. 300, 302-305.) The key to a sound solution of problems of res judicata in administrative law is [\*\*127] recognition that the traditional principle of res judicata as developed in the judicial system should be fully applicable to some administrative action, that the principle should not be applicable to other administrative action, and that much administrative action should be subject to a qualified or relaxed set of rules concerning res judicata. ' (2 Davis, Administrative Law, 568; compare [Aylward v. State Board etc. Examiners, 31 Cal. 2d 833, 838 \[192 P.2d 929\]](#) . . . [citations omitted]. . . .)

"The doctrine is not applied when the decision of the agency is made pursuant to its rule-making powers ( [Olive Proration etc. Com. v. Agricultural etc. Com., 17 Cal. 2d 204, 208 \[109 P.2d 918\]](#)) or when . . . the legislature intended that the agency should exercise a continuing jurisdiction with power to modify or alter its orders to conform to changing conditions. . . .' ( [Olive Proration etc. Com. v. Agricultural etc. Com., supra, at 209.](#)) [\*12] Likewise the public interest in preventing the practice of a profession by one not qualified may require a further review of the law applicable to a license to practice. (See [Aylward v. State Board etc. Examiners, 31 Cal. 2d 833 \[192 P.2d 929\]](#).)

"The function of the administrative agency in the present case, however, is the purely judicial one of reviewing another agency's decision to determine whether that decision conforms to the law and is supported by substantial evidence. ( [Bus. & Prof. Code, § 23084.](#)) *The doctrine of res judicata applies to such a decision, unless the statute creating the agency authorizes it to reconsider the case.* Since the board is prohibited from reconsidering or reopening a case after a copy of its decision has been mailed or delivered to the parties ( [Bus. & Prof. Code, § 23090, supra](#)), its decision was res judicata. " (Emphasis added.) [55 Cal. 2d 728 at 731-733. Cf. 37 Ops. Cal. Atty. Gen. 133](#), issued three weeks prior to the *Hollywood Circle* case.

As [\*13] pointed out by the Supreme Court, the California rule against agency reconsideration is not applicable to rule-making functions, it is not applicable when the Legislature specifically intends an agency to have power to change or modify its previous decisions, and it does not apply when "the public interest in preventing the practice of a profession by one not qualified . . . require[s] a further review of the law applicable to a license to practice. "

Moreover, there is language in the case of [Aylward v. State Board etc. Examiners, 31 Cal. 2d 833 \(1948\)](#), cited by the Supreme Court in the *Hollywood Circle* case, *supra*, suggesting that where a decision made by an administrative agency is beyond that agency's authority or jurisdiction and thus void as a matter of law, the agency has not in reality exercised its power to act in the matter, and it may bring the matter back in order to render a valid

decision within its jurisdiction. [Aylward v. State Board etc. Examiners, supra, 31 Cal. 2d at 838-39](#). See also [Godshalk v. City of San Diego, 16 Cal. App. 3d 459 \(1971\)](#). [\*14] However, since we have not been presented with a specific factual context, it would be inappropriate to speculate [\*\*128] here about circumstances which might possibly result in the Coastal Commission rendering a decision beyond its jurisdiction or authority.

#### IV. Conclusion

From the foregoing analysis we draw the following conclusions:

The Coastal Commission may not, on the basis of subsequently-received, significant information revoke or modify a permit previously issued, or reconsider the previous denial of a permit, merely because it might have decided the matter differently had the subsequent information been presented at the original hearing. The factual determinations of that hearing are conclusive and binding, and the Commission has no jurisdiction or authority to reopen the matter.

However, we also conclude that the State Supreme Court has relaxed the rule against agency reconsideration in certain narrowly confined circumstances, *i.e.*, it does not apply to rule-making functions, it does not apply where the Legislature specifically grants the authority to reconsider, and it does not apply when "the public interest in preventing the practice of a profession by one not [\*15] qualified . . . require [s] a further review of the law applicable to a license to practice." [Hollywood Circle, supra, 55 Cal. 2d at 731-33](#). Nor does the rule apply to those decisions which are beyond the authority or jurisdiction of the particular agency. [Aylward, supra, 31 Cal. 2d at 838-39](#); [Godshalk, supra, 16 Cal. App. 3d 459](#). However, any discussion as to whether or not a given decision of the Coastal Commission might be beyond its jurisdiction or authority must await a specific factual context.

The Commission has also asked whether our conclusion would be changed if information submitted at the original hearing were intentionally or negligently misrepresented, or if pertinent information were through intent or negligence not submitted. In view of the substantial procedures through which the Commission gathers pertinent information from numerous sources, including its own staff's investigations, it is difficult to conceive of a situation where misrepresented information upon which the Commission's authority to issue or deny a permit depends would not be contradicted by [\*16] more accurate information from other sources. Because analysis of this question would vary depending on the specific factual context, we decline to render an opinion on the question in the absence of such a context.

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CA Attorney General Opinions

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## UNRAVELING SOME COMMON PROCEDURAL TANGLES

Steve Dorsey

September 6, 2007

### I. Introduction

Parliamentary and procedural issues can sometimes cause as much conflict for a city council as policy issues. The conflicts arise in many cases because the city council does not know the applicable procedural rule and, in other cases, because the rule itself is unclear. This paper will present a few of the more difficult and common procedural problems and offer solutions that members of our public law department have developed and have found workable.

The solutions offered in this paper are based upon Robert's Rules of Order,<sup>1</sup> which many cities have adopted. For reasons discussed in Section II, Robert's sometimes is unclear or leads to illogical results in the city context. This paper will point out such instances and indicate when a city should consider adopting a local procedural rule to eliminate confusion or provide a more logical result.

Many cities have adopted their own rules governing parliamentary and procedural issues. In addition, some cities may have developed different solutions than those offered in this paper. Cities should follow their own individual rules unless they conflict with an established legal principle.

Whatever rules are followed in your city, it is important that everyone knows these rules to avoid acrimony and confusion. After all, the purpose of procedural rules is to facilitate, not complicate, the transaction of business.

### II. Difficulties in Applying Robert's Rules of Order

Many cities have adopted Robert's Rules of Order to govern procedural and parliamentary issues at their meetings. If adopted, Robert's is controlling and binding as cities have the authority to adopt their own procedural rules. (See, Cal. Gov't Code § 36813, Dry

<sup>1</sup> All references to Robert's in this paper are to Robert's Rules of Order Newly Revised (10th ed. 2000), published by the Perseus Books Group. Other versions of Robert's may differ in some respects. This Tenth Edition supersedes all previous editions.

richard richards  
(1916–1988)

glenn r. watson  
(retired)

harry l. gershon  
(1922–2007)

steven l. dorsey  
william l. strausz  
mitchell e. abbot  
ory w. stepanicich  
rochelle browne  
william b. rudell  
quinn m. barrow  
carol w. lynch  
gregory m. kunert  
thomas m. jimbo  
robert c. ceccon  
even h. kaufmann  
kevin g. ennis  
robin d. harris  
michael estrada  
laurence s. wiener  
steven r. orr  
b. tilden kim  
saskia t. asamura  
kayser o. sume  
peter m. thorson  
james l. markman  
craig a. steele  
t. peter pierce  
terence r. boga  
lisa bond

janet e. coleson  
roxanne m. diaz  
jim g. grayson  
roy a. clarke  
william p. curley iii  
michael f. yoshiba  
regina n. danner  
ala gutierrez baeza  
teresa ho-urano  
bruce w. galloway  
diana k. chuang  
billy d. dunsmore  
amy greyson  
deborah r. hakman  
d. craig fox  
alexander abbe  
patrick k. bobko  
david m. snow  
lolly a. Enriquez  
kirsten r. bowman  
g. inder khalsa  
ginetta l. giovinco  
trisha ortiz

candice k. lee  
david g. alderson  
melissa c. lauzardo  
icela e. marroquin  
brian d. mabee  
gena m. stinnett  
jennifer petrusis  
steven l. flower  
matthew e. cohen  
andrew tam  
debbie y. cho  
geoffrey ward  
erin l. powers  
toussaint s. bailey  
itney g. mcdonald

of counsel  
mark l. lamken  
sayre weaver  
william k. kramer  
norman a. dupont  
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Creek Valley Ass’n, Inc. v. Bd. of Supervisors, 67 Cal. App. 3d 839 (1977)). Unfortunately, Robert’s in some cases can lead to confusion and illogical results.

Difficulties arise because in some cases, the California Government Code imposes different rules than those contained in Robert’s. For example, Section 42 of Robert’s provides that the chair will not participate in debate. Government Code Section 36803 provides just the opposite for general law cities.<sup>2</sup>

Other difficulties also arise in applying Robert’s because Robert’s covers primarily administrative and legislative bodies. A city council exercises both legislative and quasi-judicial authority. Robert’s recognizes these dual functions and the seeming difficulty of its application to city councils. It lists five general basic types of deliberative assemblies and notes that certain smaller public bodies, as exemplified by city councils, may serve a lawmaking function without assuming the character of a full-scale legislative assembly.<sup>3</sup> Robert’s notes that in some respects, a city council most closely resembles a board, which is defined as an administrative, managerial, or quasi-judicial body of elected or appointed persons rather than a legislative assembly.

Due process considerations impose certain procedural requirements on quasi-judicial entities. These requirements are sometimes different than the provisions in Robert’s, which cover primarily legislative and administrative bodies. As a result, a city council sometimes must follow a certain rule in Robert’s for legislative matters but employ a different rule on quasi-judicial matters. This can lead to obvious confusion.

Despite these difficulties, a clear understanding of the terms "session" and "meeting," as employed in Robert’s, can eliminate much confusion. Robert’s gives the term "meeting," in particular, a different connotation than that commonly used by city councils.

As defined in Section 8 of Roberts, the term "meeting" means a single official gathering of its members to transact business for a length of time. "Meeting" refers to any regular,<sup>4</sup> special or adjourned meeting of a city council. The term "session" means a regular or special meeting and all adjourned meetings thereof. It refers to a meeting or a series of connected meetings devoted to a single order of business, program, or agenda. Thus, a regular city council meeting adjourned to the next regular meeting is usually a session of one meeting. A regular meeting adjourned to a time other than the next regular meeting is a session of two meetings. Even this distinction, though, can be confusing when business matters not on the first meeting agenda are added to the adjourned meeting agenda. Robert’s, however, seems to work best when considering all adjourned meetings to be treated as part of a single session.

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<sup>2</sup> Section 36803 provides, "[t]he mayor may make or second any motion and present and discuss any matter as a member of the council."

<sup>3</sup> Section 1 of Robert’s distinguishes five principal types of entities: (1) the mass meeting; (2) the assembly of an organized society; (3) the convention; (4) the legislative body; and (5) the board.

<sup>4</sup> For purposes of this discussion, a "regular" meeting is one held on the date provided in the city's code or bylaws as required by Section 54954 of the Government Code.

Many cities adopt their own rules to cover all procedural issues or those specific areas where Robert's is either unclear or does not provide a logical solution. This paper will illustrate some examples where a local procedural rule might be especially appropriate.

### III. Taking a Second Look

Procedures to review an issue previously considered by a city council frequently give rise to confusion. This is caused, in most cases, by the council's failure to understand the related motions to reconsider, renew and rescind, and, in other cases, by ambiguous rules in Robert's.

#### A. Reconsideration

The motion to reconsider is covered by section 37 of Robert's and is a method to vote again on a motion that was previously considered, whether the motion passed or failed. The motion must be made by a member of the prevailing side -- a person voting yes if the motion passed or a person voting no if the motion failed. The motion may be seconded by any member of the council.

The time limits for motions to reconsider create the most confusion. According to Robert's, the motion must be made during the same day in a session of one day or, in a session of more than one day, "on the same day the original vote was taken or on the next succeeding day within the session on which a business meeting is held." (Robert's, p. 305).

Even the experts can be confused on time limits governing motions to reconsider. The American Institute of Parliamentarians has ruled that a motion to reconsider can be made at any meeting -- special, adjourned or regular -- held on the next day following the meeting at which the original vote was taken. (See American Institute of Parliamentarians, Parliamentary Opinions 71 (1982)). The Institute conceded that its position is not consistent with a literal reading of Robert's and determined that Robert's does not mean what it says.

Despite contrary authority, Robert's appears to allow a councilmember to make a motion to reconsider only at the same meeting or the first adjourned meeting, if any, following the vote to be reconsidered. It also appears that the motion can be made at the first adjourned meeting even if that meeting is held later than one day following the original meeting. The motion would be out of order at a special or regular meeting following the meeting at which the vote was held on the motion to be reconsidered.

#### B. Renewal

Renewal of motions is discussed in Section 38 of Robert's. Renewal of a motion is a method to vote again on a motion that failed to receive sufficient votes for passage when last considered. No formal motion to renew is required; the motion is renewed simply by making the same motion.

Any member of the city council may make the motion regardless of how the member voted on the original motion. The motion may not be made at the same session during which the

original vote was taken.<sup>5</sup> Therefore, a motion may not be renewed during the same city council meeting or any adjourned meeting thereof.

A motion to reconsider is the proper procedure for raising a failed motion at the same or first adjourned meeting of the same session. Since a motion to reconsider can only be made at the same or first adjourned meeting of the same session, and a motion cannot be renewed during the same session, there appears to be no effective method to raise again a motion at a second or subsequent adjourned meeting of the meeting at which the motion failed. Thus, city councils may want to consider a local rule to permit renewal of motions at adjourned meetings.

### C. Rescission

Robert's discusses motions to rescind in Section 36. A motion to rescind is a method to repeal a previously approved motion. Any member can make a motion to rescind, regardless of the member's original vote on the matter. Such rescission is used to strike out motions, resolutions, or bylaws adopted by the city council at some previous time.

Robert's provides that a motion to rescind requires one of the three following votes:

"(a) a two-thirds vote, (b) a majority vote when notice of intent to make the motion, stating the complete substance of the proposed change, has been given at the previous meeting or in the call of the present meetings, or (c) a vote of a majority of the entire membership -- whichever is most practical to obtain." (Robert's, p. 295).

Alternative (b) will apply to virtually all motions to rescind, since in almost all cases the Brown Act will require the motion to be on the written agenda. Alternative (c) probably applies to a motion to rescind in those rare instances where a motion to rescind can be added to the agenda.

Under option (b), the most common situation, the losing side on a 3-2 vote can rescind the action at a later meeting by a 2-1 vote if two members from the prevailing side are unable to attend. Therefore, a motion can be rescinded even if none of the members change their votes. City councils should consider this subject for a local procedural rule.

Robert's does not indicate whether the number of votes necessary to rescind an action should be the same as the number necessary to adopt the action. However, this appears to be an appropriate rule.

### D. Implications for Adoption of Ordinances

Robert's treatment of renewal, reconsideration and rescission of motions leads to some interesting results in connection with the adoption of ordinances. Section 36934 of the

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<sup>5</sup> Renewal of motions is limited by the principle that a city council cannot be asked to decide the same question twice during one session. Thus, such renewal may be in order when the motion becomes a different question either through significant changes in wording or changes in the circumstances under which it was proposed.

Government Code provides that an ordinance cannot be adopted within five days of its introduction. No maximum time is specified between introduction and adoption of an ordinance. Therefore, a city council can theoretically renew a motion to adopt an ordinance that fails at any time without reintroducing the ordinance, assuming compliance with the Brown Act.

This possibility can be useful. For example, the second reading of a zoning ordinance is sometimes delayed until the property owner accomplishes certain actions. Nevertheless, establishing some time limit between introduction and adoption of an ordinance is an appropriate matter for a local procedural ordinance.

An ordinance cannot be repealed except by the adoption of another ordinance. It is unclear, however, whether a city council can reconsider or rescind a motion to adopt an ordinance before the thirty-day referendum period expires. In the absence of a procedural rule to the contrary, it seems likely that such an action would be proper. It is open to question whether such an action requires the same number of votes needed to adopt the ordinance or can be adopted by a mere majority of those voting .

#### E. Brown Act Considerations

Under the Brown Act, a matter can be acted upon, except in special circumstances, only if the matter is listed on an agenda posted not less than 72 hours prior to the meeting. (Cal. Gov't Code § 54954.2). This requirement does not apply if the matter was included in a posted agenda for a meeting held not more than five days prior to the current meeting and the matter was continued from that meeting.

The procedural rules must be read with these requirements in mind. For example, a motion to reconsider cannot be made unless the matter is continued to an adjourned meeting from a meeting held five or fewer days prior to the adjourned meeting, the matter is listed on the agenda for the new meeting, or one of the other exceptions in the Brown Act applies. Similar considerations apply to motions to renew and rescind.

#### IV. Quasi-judicial Proceedings

##### A. Definition

A quasi-judicial proceeding is one that requires a city council to hold a hearing and render a decision by applying facts presented at the hearing to a standard of review. Conditional use permits, variances and appeals of disciplinary matters are examples of quasi-judicial matters.

##### B. Quasi-judicial Decisions Cannot be Reconsidered or Rescinded

A city council cannot reconsider or rescind a quasi-judicial decision after the decision is final in the absence of statutory authority providing otherwise. The leading case establishing this rule is Heap v. City of Los Angeles, 6 Cal. 2d 405 (1936). In Heap, the California Supreme Court examined the question of whether the Los Angeles Civil Service Commission could

reconsider its action upholding the discharge of a city employee. The Supreme Court found that the charter did not grant the Commission authority to rehear or reconsider final decisions. The court also noted that such authority could not be implied. The court held that the Commission had no jurisdiction to retry the question and make a different finding at a later time.

Relying upon Heap, the Attorney General opined that the California Coastal Zone Conservation Commission could not revoke a previously issued permit, or grant a previously denied permit. (59 Op. Cal. Atty. Gen. 123 (1976)). This opinion contains a very good discussion of the cases discussing the rule and the reasons supporting it.

The case of Hollywood Circle Inc. v. Dept. of Alcoholic Beverage Control, 55 Cal. 2d 728 (1961), provides that the general rule prohibiting reconsideration of quasi-judicial decisions does not apply to rule-making functions in two situations: (1) where the legislature specifically intends an agency to have the power to change or modify its previous decision, or (2) where "the public interest in preventing the practice of a profession by one not qualified . . . require[s] a different result." None of these situations is likely to arise in connection with a city council quasi-judicial decision.

The case of Guilbert v. Regents of University of California, 93 Cal. App. 3d 233 (1979), seems to hold that the general rule also does not apply to reduction of a penalty in a disciplinary action. In Guilbert, a laboratory supervisor reduced his employee's two-week suspension, in response to the university president's letter to the supervisor suggesting that the penalty was excessive after the employee appealed the matter to the university president. The employee later challenged the reduction, claiming the suspension did not meet requirements of fundamental fairness. The court disagreed and held that such reduction was permissible because the university merely exercised its power to mitigate the imposed punishment. The general rule precluding redetermination did not apply because the purpose behind the rule – protecting the employee's rights by preventing a redetermination without due process – did not exist. It is not clear how much authority this case provides for an exception to the general rule. Guilbert might merely stand for the proposition that a person benefited by a reconsideration cannot use the fact of the reconsideration as a basis to challenge the action.

With the few minor exceptions discussed herein, quasi-judicial decisions of a city council are final unless a statute provides otherwise. I am aware of no general exceptions applicable to the types of quasi-judicial matters normally considered by cities. In the absence of a charter or code provision to the contrary, such decisions cannot be reconsidered or rescinded once final.

### C. When Quasi-judicial Decisions Become Final

Since quasi-judicial decisions cannot be reconsidered or rescinded, it is important to determine when such decisions become final. The California Supreme Court in Lindell Co. v. Board of Permit Appeals, 23 Cal. 2d 303 (1943) held that this question is "dependent for its answer upon the scheme of the law for which the power is conferred."

No specific procedure is provided for the approval of variances and conditional use permits. Topanga Association for a Scenic Community v. County of Los Angeles, 11 Cal. 3d

506 (1974), holds that a city council, in rendering adjudicatory decisions, must adopt findings that “bridge the analytic gap between raw evidence and the ultimate decision.” This case, by inference, covers all quasi-judicial decisions.

Most cities, either by custom or ordinance, approve variances and conditional use permits by adopting a resolution containing appropriate findings, even though Topanga does not require a resolution. It is generally accepted that variance and conditional use permit decisions become final only upon adoption of the resolution setting forth such findings. Therefore, a city council likely can change its decision on a variance or conditional use permit until it adopts a resolution setting forth its findings and decision. After the city council adopts the resolution, its decision becomes final and cannot be revised or revisited.<sup>6</sup>

The same general principle applies to decisions involving personnel and other quasi-judicial matters. The decision is usually not final until the decision maker issues a written decision. A city council would normally make such a ruling by resolution. In the case of an individual hearing officer, the decision is normally contained in a letter or other communication to the employee.

Cities should ensure that final decisions regarding quasi-judicial matters are never announced orally to avoid any confusion as to whether its action constitutes a final decision. City councils are recommended to adopt an ordinance clearly stating that approval of a variance and other quasi-judicial matters requires written findings and a final action by resolution. This makes it clear when the decision is final and permits the decision maker to prepare clear and adequate findings.

## V. Absences

A councilmember is generally required to be physically present at the meeting to vote on matters before the council. Recognizing the difficulty of some jurisdictions in obtaining the necessary number of members to form a quorum, the Brown Act allows a councilmember to participate in a proceeding through teleconferencing as long as all votes during the meeting are taken by roll call. (Cal. Gov’t Code § 54953(b)).

Section 45 of Robert’s recognizes the fundamental principle that the right to vote is limited to members who are actually present at the time a vote is taken, although members need not be present when the question is put. Exceptions to this rule, which often include provisions for voting by mail and proxy voting, must be expressly stated in local procedural rules.

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<sup>6</sup> A trial court recently prevented a city council from denying a variance by adopting a resolution containing findings of denial after the city council had approved the variance and instructed staff to prepare a resolution of findings approving the variance. At the meeting to consider the resolution, one member of the city council changed his vote and the new majority then directed staff to prepare a resolution denying the variance. Notwithstanding the fact the municipal code contained a provision that the variance would not be final until the resolution was adopted, the court decided the original approval controlled over the new resolution of findings and held that the city council had essentially adopted the findings in the staff report when it initially voted to approve the variance. Thus, until an appellate court decides the issue, there is some doubt as to when quasi-judicial decisions become final.

## VI. Abstentions

### A. General Rule

Section 36810 of the Government Code provides that a majority of the city council constitutes a quorum in a general law city. Section 36810 further provides, “[l]ess than a majority may adjourn from time to time, and compel attendance of absent members in the manner and under the penalties prescribed by ordinance.” Most cities are general law cities with city councils composed of five members. (See Cal. Gov’t Code §§ 34102, 36501). Thus, a quorum of at least three members, which make up a majority of the five-member city council, must be present for the transaction of business.

Although many persons generally assume that a majority of a quorum is necessary to take action, there appears to be no case or statutory authority so providing. Martin v. Ballinger, 25 Cal. App. 2d 435 (1938), seems to suggest that the votes of two members are necessary to take action. However, a careful reading of the case shows that this issue was not before the court.

Robert’s provides in Section 44 that abstentions are not counted in the tally although they are counted for purposes of determining a quorum. Those abstaining tacitly agree to let the majority of those voting decide the issue.

Dry Creek Valley Ass’n, Inc., v. Bd. of Supervisors, *supra*, holds that in the absence of a rule to the contrary, persons abstaining will be counted as having voted with the majority. The court noted that courts generally adhere to the doctrine that “when members of a board, present at a meeting, desire to defeat a measure, they must vote against it; . . . their refusal to vote is, in effect, a declaration that they consent that the majority of the quorum may act for the body of which they are members.” (Dry Creek Valley Ass’n, 67 Cal. App. 3d 839 at 842-43 (quoting Martin v. Ballinger, 25 Cal. App. 3d at 439)). The rule that those abstaining are counted as having voted with the majority does not apply, however, in those jurisdictions adopting Robert’s.

This presents the interesting question of whether a motion passes if in a seven-member body, two members vote in favor of the motion, two members abstain, and three members are absent. Under the rule espoused in Dry Creek Valley Ass’n, the motion passes because those abstaining will be counted as having consented to the majority’s decision to approve the motion.

A similar result would occur under Robert’s. Although the rule in Dry Creek Valley Ass’n is inapplicable, Robert’s nevertheless provides that the basic requirement for approving an action is a majority vote, defined as “more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions” (Robert’s, p. 387). Robert’s seems to suggest that so long as there is a quorum, a majority of those voting is sufficient to take action. Therefore, unless the city’s local procedural rules require a majority of those present to take an action, the motion passes since more city council members vote in favor of the motion (2 “yes” votes) than against it (no members voted against the motion).<sup>7</sup>

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<sup>7</sup> This example assumes that the abstentions were not due to a conflict of interest.

In cities that have adopted Robert's, a 2-0-3 vote similarly passes unless there is a statute requiring a higher number to pass the particular matter. In fact, taking Robert's to its extreme, a vote of 1-0-4 would also pass. Note, however, that Section 12 of the Civil Code and Section 15 of the Code of Civil Procedure might compel a different result. These sections provide:

“Words giving joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the Act giving the authority.” (Cal. Civ. Code § 12; Cal. Civ. Proc. Code § 15).

Providing that the motions will pass in the above situations should not create problems so long as everyone is aware of the effect of an abstention. In fact, such an interpretation has the beneficial effect of encouraging council members to vote rather than abstain.

Whenever a local rule or statute requires a particular vote, however, a different result will occur. For example, Government Code Section 36936 provides that “resolutions, orders for the payment of money, and all ordinances require a recorded majority vote of the total membership of the city council.”<sup>8</sup> Thus, the 2-0-3 vote discussed above is not sufficient to adopt an ordinance.

#### B. Rule of Necessity

The rule of necessity provides that a councilmember with a conflict of interest may participate in a decision when the member's participation is necessary for the city council to take action. This situation usually arises when a majority of the city council has a conflict.

The Fair Political Practices Commission has determined that a member who is precluded from voting due to a conflict of interest cannot be counted for purposes of making a quorum. This is different from the general rule in Robert's providing that such member is counted toward the quorum even though he or she may abstain from voting. Section 45 of Robert's precludes city councilmembers from voting on a question in which he or she has direct or pecuniary interest not common to other members. However, Robert's also provides that “no member can be compelled to refrain from voting in such circumstances.” (Robert's, p. 394).

Under the principle established by the Commission, the rule of necessity will apply whenever it is not possible to form a quorum without the participation of councilmembers with conflicts. Sufficient councilmembers to form a quorum are selected by drawing straws or some similar impartial method until a sufficient number to make a quorum and to act on the particular matter is achieved. The councilmembers so selected would then be permitted to participate on the matter even if their votes are not necessary for the city council to take action.

I believe the process above can lead to unnecessary participation by councilmembers with conflicts of interest. I believe it would be preferable for the Commission to allow such councilmembers to count towards a quorum but prohibit them from otherwise participating in the

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<sup>8</sup> It is important to remember that Section 36936 only applies to the city council. Thus, a 2-1 vote is sufficient to adopt a planning commission resolution.

decision unless the council does not have sufficient members without a conflict to take action. This would reduce the number of times a councilmember can actively participate in a decision in which he or she has a conflict.

## VII. Taking Public Comment

### A. General Rule

The Brown Act generally requires city councils and other local legislative bodies to conduct their business in open and public sessions. (Cal. Gov't Code § 54953(a)). The Brown Act provides that members of the public shall be given an opportunity to directly address the legislative body on any item of interest to the public within that body's subject matter jurisdiction. (§ 54954.3). Statutes governing the public's right to comment on such matters are construed liberally to ensure their participation in all phases of government decisionmaking and curb misuses of the democratic process by secret legislation and deliberation. (See McKee v. Orange Unified Sch. Dist., 110 Cal. App. 4th 1310 (2003); San Diego Union v. City Council of San Diego, 146 Cal. App. 3d 947 (1983)).

The public's right to comment on matters involving the public interest is not absolute. A city council can prohibit the public from commenting on matters not within the city council's subject matter jurisdiction. (78 Op. Cal. Atty. Gen. 224 (1995)). There also is no requirement to provide a general public comment period at each session of a continued meeting since the Brown Act's language indicates that every "agenda," rather than every session, requires public comment. (See Chaffee v. San Francisco Library Comm'n, 115 Cal. App. 4th 461 (2004)). In addition, the Brown Act does not require a city council to allow comment on whether an item should be placed on the council's meeting agenda. (See Coal. of Lab, Agric. & Bus., v. County of Santa Barbara Bd. of Supervisors, 129 Cal. App. 4th 205 (2005)).<sup>9</sup>

## VIII. Conclusion

This paper seeks to help alleviate some of the confusion and controversy surrounding various procedural and parliamentary issues that city councils regularly face. Robert's has an answer for almost all situations. However, the answers provided by Robert's are not always the best or most desirable. Thus, city councils may want to consider adopting some local modifications of Robert's or a comprehensive procedural ordinance or resolution addressing potential sources of conflict.

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<sup>9</sup> This case might support a city's ability to preclude discussion of a procedural issue involving an items of business. For example, the rationale of Coal. of Lab, Agric. & Bus. might impliedly permit city councils to prevent public testimony on a motion to reconsider a motion dealing with a business item the public had previously thoroughly discussed earlier in the meeting.



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# Staffing a Public Meeting: From War Stories to Your Story

Thursday, May 5, 2022

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**STAFFING A PUBLIC MEETING:  
FROM WAR STORIES TO YOUR STORY**

**Attorney Development and Succession Committee  
League of California Cities  
Spring 2022 City Attorneys Department Conference**

## INTRODUCTION

One of the most challenging and exciting tasks to be undertaken by an attorney who is new to municipal law or to an advisory role is that of advising city councils, commissions, and boards during a public meeting.

Through a series of vignettes and the panel discussions that follow, the Attorney Development and Succession Committee seeks to highlight essential skills for a municipal attorney staffing a public meeting. The program will do so through the stories told by each vignette and shared by the panelists from their own experiences. Viewing meetings through the lens of three of the roles that a municipal attorney can inhabit, the program is organized into three parts featuring an archetypal city attorney: 1) City Attorney as “student”; 2) City Attorney as “counselor”; and 3) City Attorney as “referee.”

### City Attorney as “student”

Preparation for meetings often involves more than simply knowing what is on the agenda, although that will of course inform the preparatory work the attorney may feel is needed prior to the meeting. Communication with key staff may reveal new background information or new circumstances germane to upcoming agenda items. As an example, staff may be aware of community or applicant concerns that have arisen with respect to a proposed housing project that could have implications on findings that could be necessary should the client wish to proceed in one direction or another. Staff may also be able to help identify potential conflict of interest issues that may affect which members can participate in a matter.

### City Attorney as “counselor”

During a public meeting, members of the deliberative body may ask questions that would optimally be discussed in either a closed session or a one-on-one conversation rather than in a public setting. Being responsive in a non-confidential setting can be a challenge, and the panel will discuss how an attorney might respond during what can be a rather unsettling experience when an attorney’s advisory role, duty of confidentiality and need to avoid prejudicing the city client can seem to conflict.

### City Attorney as “referee”

The attorney’s role in managing the public meeting process is also important. During the meeting the attorney may need to address procedural and parliamentary issues. Issues that implicate public hearing or due process requirements may also arise, requiring the attorney to weigh in and navigate during the meeting to help the client lawfully accomplish its objectives.

Through the vignettes, we follow a new City Attorney through what ultimately transpires to be a harrowing day. After each vignette, the panelists will discuss how they prepare for meetings, procedural issues that they have encountered during public meetings, and how they respond to conflict and other issues that may arise during the meeting. While acknowledging that it is impossible to be fully prepared for *all* eventualities that may arise during a public meeting, the panelists will discuss general approaches that apply to a variety of circumstances, ways to navigate through common issues, and how to learn from one's experience.

There are also treatises, guides, and informational materials that the Committee's attorneys have found useful and informative during the course of staffing public meetings. These have been described or linked in these materials, and we hope that these resources will be supplemented in the future as our community of attorneys identifies additional resources that will assist other members of the Department. An index for a suggested "Essential Skills Binder" is also provided, containing key resources an attorney may want to take to public meetings.

Attorney Development and Succession Committee  
City Attorneys Department  
League of California Cities

## SETTING THE STAGE: HOW TO STAFF A PUBLIC MEETING

By sharing their experiences and approaches, a panel of city attorneys guided by a moderator will identify and discuss challenges and best practices for advising city councils and other municipal bodies in public meetings. Following a recorded skit that will preface each segment, the discussions will address the essential skills implicated in three different roles played by the City Attorney with respect to public meetings:

- City Attorney as “student”

An introductory vignette introduces us to an attorney the morning of their first council meeting, and some of the steps taken and basic resources they relied upon to prepare for that meeting. The discussion will address how to effectively prepare for meetings, including what resources to review and assemble, how to coordinate with key staff in advance, and how to anticipate potential issues that may arise.

- City Attorney as “counselor”

This vignette takes us to the meeting itself, where the hapless attorney is bombarded with questions about the defensibility of certain actions, liability that may arise from the same, as well as a potential conflict of interest issue. The panel discussion and stories will address how to give legal advice to the city client in a public setting, including when to speak up during meetings, how to give advice in a non-confidential setting, and how to deal with specific requests received from the dais. Potential strategies to be discussed include giving advice before the meeting, such as with a confidential memorandum, rather than during the meeting itself, and what to do when legal advice is requested during the meeting.

- City Attorney as “referee”

The final scenario finds our beleaguered attorney attempting to explain what happened procedurally during a heated discussion in the prior scene. The stories to be discussed by the panel will explore how to oversee the meeting process, including the different types of matters considered in meetings (e.g., public hearings, workshops, etc.) and how to handle parliamentary procedure, continuances, and other procedural matters that may arise during the course of a public meeting.

Through the discussion, those new to the public meeting context will be provided with suggestions and means by which city attorneys have acquired and applied the knowledge to adapt to issues that may arise, which can in turn be adapted and modified for their own use as suits their personality and style.

## **Resources - City Attorney as “Student” - Preparing for a Meeting<sup>1</sup>**

### **Brown Act:**

Familiarity with the Ralph M. Brown Act (Govt. Code §54950, et seq.), commonly referenced as “the Brown Act,” is a fundamental requirement for those staffing public meetings or advising staff in preparation for them. Chapter 2 of *The California Municipal Law Handbook*, a League of California Cities resource published by CEB and updated by members of the City Attorneys Department (Department), is an absorbing read for attorneys, whether before or after review of the statute itself. It also includes substantive practice tips, citations, and other references that can be key for effective implementation. *The Municipal Law Handbook* is updated annually by Members of the Department. <https://store.ceb.com/the-california-municipal-law-handbook>

Many city attorneys take digital or hard copies of various provisions of the Brown Act with them to meetings. These may include, for example, Govt. Code section 54954.2, subdivision (b) of which delineates the findings that a legislative body must make to take action on items of business not appearing on the posted agenda, to add items to an agenda at the time of the meeting and Govt. Code section 54957.1, which contains the requirements for reporting out of closed session.

Cal Cities’ *Open & Public V: A Guide to the Ralph M. Brown Act (2016)*, developed by the Department, contains a summary of the Brown Act, its requirements, and remedies. [https://www.calcities.org/docs/default-source/city-attorneys/open-public-v-revised-2016.pdf?sfvrsn=995414c9\\_3](https://www.calcities.org/docs/default-source/city-attorneys/open-public-v-revised-2016.pdf?sfvrsn=995414c9_3). The California Attorney General’s Office also has a guide, “The Brown Act: Open Meetings for Local Legislative Bodies (2003), <https://oag.ca.gov/system/files/media/the-brown-act.pdf>. Additionally, see this Institute of Local Government (ILG) resource: [https://www.ca-ilg.org/sites/main/files/file-attachments/resources\\_25908.preparing\\_for\\_public\\_hearings.pdf?1436996368](https://www.ca-ilg.org/sites/main/files/file-attachments/resources_25908.preparing_for_public_hearings.pdf?1436996368)

Given recent changes in teleconferencing regulations and earlier changes to agenda provisions for closed sessions, if utilizing any resource other than the statute, particularly older resources such as the Attorney General’s resource noted above, care should be taken to refer back to applicable statutory provisions to ensure your knowledge and citations are up to date.

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<sup>1</sup> The placement of resources within the vignette headings is unabashedly arbitrary for purposes of this paper. All listed resources can be relevant, and are often critical, to matters that are addressed and/or discussed in further detail in another vignette. For example, the Municipal Law Handbook contains information relating to most, if not all, of the issues raised by this presentation, but is only cited in the first section. Accordingly, please do not respect these boundaries when preparing for your own meetings!

## Municipal Code and, if applicable, City Charter:

Local regulations such as zoning codes can govern appeals and can contain other requirements that are germane to the conduct of public meetings and public hearings, and may differ from city to city. Attorneys should be familiar with provisions that may pertain to the items that appear on upcoming agendas.

For attorneys of charter cities, applicable charter provisions should be reviewed prior to public meetings. Charters will vary significantly in length and scope of content and regulatory effect. Additionally, it should be noted that certain charter provisions may be superseded or preempted by state law, which over time has eroded charter city authority. For example, pursuant to SB 1333 (Wieckowski, 2018), certain charter provisions relating to general plan adoption and housing elements may be superseded.

Finally, some cities have adopted formal procedural rules governing how their public meetings are to be conducted, and some cities with formal meeting rules have also established other legislative bodies subject to the Brown Act and have adopted or permitted the other bodies to adopt their own, separate meeting rules. Attorneys covering public meetings of legislative bodies subject to the Brown Act will need to be familiar with any local meeting rules that apply to the meetings in addition to applicable provisions of the Brown Act.

## **Resources – City Attorney as “Counselor” – Giving Advice on Meeting Items**

### Conduct of Public Meetings and, if applicable, City Code of Conduct

*“Counsel and Council: A Guide for Building a Productive Employment Relationship,”* is a very helpful and informative League of California Cities resource. Its initial discussion of the “Nature of the Relationship” contained in pages 5 – 14, describes some of the fundamental duties, professional obligations, and constraints inherent in the city attorney position and the relationship with the client. Chapter II.C (the second C, beginning on page 21) contains a good discussion of navigating the procedural rules and the Brown Act. Chapter III.B, beginning on page 30, describes dilemmas that may occur with respect to communication and the provision of legal advice, whether in a public meeting or otherwise. As a soup-to-nuts primer, this resource can be useful throughout one’s tenure as a city attorney.

The Department’s *“Counsel and Council”* publication was recently updated, and is available on the CaCities website. [https://www.calcities.org/docs/default-source/city-attorneys/cc-counsel-council-2022-ver4.pdf?sfvrsn=ffd5aa65\\_1](https://www.calcities.org/docs/default-source/city-attorneys/cc-counsel-council-2022-ver4.pdf?sfvrsn=ffd5aa65_1)

The ad hoc committee responsible for the update will be discussing the new edition at this conference.

Even those who have not yet staffed a meeting know that interesting issues can arise during the course of a public meeting discussion. The Institute for Local Government (“ILG”) has a resource entitled “Tips for Promoting Civility in Public Meetings” (2011), which provides strategies for dealing with different points of view and the disagreements that can arise as a result. The brief guide also includes a number of helpful references and resources for the quest for civil discourse. [https://www.ca-ilg.org/sites/main/files/file-attachments/tips\\_for\\_promoting\\_civility\\_in\\_public\\_meetings\\_3.pdf?1395441954](https://www.ca-ilg.org/sites/main/files/file-attachments/tips_for_promoting_civility_in_public_meetings_3.pdf?1395441954)

Another resource for general information on open meetings is “the ABCs of Open Government Laws,” an ILG resource. <https://www.ca-ilg.org/sites/main/files/file-attachments/abcs.pdf?1485796214>.

Civil discourse and non-personalized dialogue are also encouraged in the ILG resource entitled “Attributes of Exceptional Councils:” [https://www.ca-ilg.org/sites/main/files/file-attachments/exceptional\\_councils\\_6.21.pdf?1497853394](https://www.ca-ilg.org/sites/main/files/file-attachments/exceptional_councils_6.21.pdf?1497853394), and additional strategies are included in “Dealing with Deeply Held Concerns and Other Challenges to Public Engagement Processes,” [https://www.ca-ilg.org/sites/main/files/file-attachments/deeply\\_held\\_concerns.pdf?1497552740](https://www.ca-ilg.org/sites/main/files/file-attachments/deeply_held_concerns.pdf?1497552740)

With respect to issues relating to voting requirements for various types of actions including absences, vacancies, abstentions and disqualifications, and the Rule of Necessity, a 2006 paper for the Department’s Spring Conference provides a good grounding of statutory requirements applicable to various situations. [https://www.ca-ilg.org/sites/main/files/file-attachments/resources\\_LEAGUE\\_OF\\_CA\\_CITIES\\_VOTING\\_REQUIREMENTS\\_ABSENCES\\_VACANCIES\\_ABSTENTIONS\\_AND\\_DISQUALIFICATIONS-1.pdf?1395441985](https://www.ca-ilg.org/sites/main/files/file-attachments/resources_LEAGUE_OF_CA_CITIES_VOTING_REQUIREMENTS_ABSENCES_VACANCIES_ABSTENTIONS_AND_DISQUALIFICATIONS-1.pdf?1395441985)

With respect to meeting logistics, the 2011 ILG Resource “Understanding the Role of Chair” and the Strategies for Success set forth therein can be very helpful: [https://www.ca-ilg.org/sites/main/files/file-attachments/understanding\\_the\\_role\\_of\\_chair\\_nov\\_2012\\_3.pdf?1396626970](https://www.ca-ilg.org/sites/main/files/file-attachments/understanding_the_role_of_chair_nov_2012_3.pdf?1396626970)

Some attorneys keep a copy of Govt. Code §54957.9 available in the event of potential meeting disturbance. Only applicable in event of an actual disruption of the meeting, it provides the basis for legislative bodies to clear a meeting and the constraints on the exercise of that ability.

## Resources – City Attorney as “Referee”- Procedure & Ethics

### Parliamentary Procedure

Municipalities generally reference the procedural regulatory framework to be used in their Municipal Codes or in a meeting policy (Govt. Code §36813). Historically, many jurisdictions have utilized *Robert’s Rules of Order*, now in its 12<sup>th</sup> edition, the *In Brief* edition of which is in its 3<sup>rd</sup> edition. <https://robertsrules.com/>.

The application of Robert’s Rules can be complicated. A 2007 paper, “Unraveling some common Procedural Tangles” may help with various motions and Govt. Code and due process requirements.

<https://www.cacities.org/UploadedFiles/LeagueInternet/f6/f69097b8-e3c5-47ff-afd5-3c6799600759.pdf>

*Rosenberg’s Rules of Order* were developed by Judge Dave Rosenberg, a parliamentarian and former member of the Yolo County Board of Supervisors as well as a former Davis City Council Member and Mayor. Judge Rosenberg’s work has been hailed as a commonsense simplification of parliamentary procedure and adaptation of meeting rules in a manner suitable for use by smaller governing bodies. *Rosenberg’s Rules of Order* are used by a growing number of jurisdictions.

[https://www.calcities.org/docs/default-source/get-involved/rosenberg's-rules-of-order-simple-parliamentary-procedures-for-the-21st-century.pdf?sfvrsn=d3f73e91\\_3](https://www.calcities.org/docs/default-source/get-involved/rosenberg's-rules-of-order-simple-parliamentary-procedures-for-the-21st-century.pdf?sfvrsn=d3f73e91_3)

There are also additional resources relating to *Rosenberg’s Rules of Order*, which can be located at: [https://www.ca-ilg.org/sites/main/files/file-attachments/resources\\_A\\_Note\\_on\\_Votes.pdf?1395441985](https://www.ca-ilg.org/sites/main/files/file-attachments/resources_A_Note_on_Votes.pdf?1395441985), as well as a handy shortened description of *Rosenberg’s Rules* and operative guidance available here: <https://www.el-cerrito.org/DocumentCenter/View/3382/Parliamentary-Procedures-Cheat-Sheet>

### Voting and Ethics

With respect to the Rule of Necessity and its application to resolve issues relating to a maintenance of a quorum for voting purposes, the previously referenced 2006 paper for the Department’s Spring Conference provides background on the Rule and its application. [https://www.ca-ilg.org/sites/main/files/file-attachments/resources\\_LEAGUE\\_OF\\_CA\\_CITIES\\_VOTING\\_REQUIREMENTS\\_ABSENCES\\_VACANCIES\\_ABSTENTIONS\\_AND\\_DISQUALIFICATIONS-1.pdf?1395441985](https://www.ca-ilg.org/sites/main/files/file-attachments/resources_LEAGUE_OF_CA_CITIES_VOTING_REQUIREMENTS_ABSENCES_VACANCIES_ABSTENTIONS_AND_DISQUALIFICATIONS-1.pdf?1395441985)

In addition to promulgating regulations relating to conflict of interest and disqualification, which are available on its website, the FPPC has guidance for public

officials on disqualifying conflicts of interest. The following page contains basic parameters for disqualifying financial interests, impacts, or effects, as well as a link to the page which explains how public officials can obtain advice from the FPPC. <https://www.fppc.ca.gov/learn/conflicts-of-interest-rules.html>

The League of California Cities guide to “*Providing Conflict of Interest Advice*” remains the gold standard for city attorneys evaluating potential conflicts of interest. The 2016 version has been updated, and the 2022 version is now available on the Department’s webpage. [https://www.calcities.org/docs/default-source/city-attorneys/conflict-of-interest-guide1240b84a-e02b-4ba3-9b4b-909ae4713742.pdf?sfvrsn=bb62333c\\_8](https://www.calcities.org/docs/default-source/city-attorneys/conflict-of-interest-guide1240b84a-e02b-4ba3-9b4b-909ae4713742.pdf?sfvrsn=bb62333c_8). The FPPC committee will be discussing the new edition at this conference.

Also informative is a 2016 ILG publication, “*Public Service Ethics Laws*,” 2016, [https://www.counties.org/sites/main/files/file-attachments/csac\\_ethics\\_booklet.pdf](https://www.counties.org/sites/main/files/file-attachments/csac_ethics_booklet.pdf).

Having 500’ and 1,00’ radius maps relating to property owned by each member of the body can be helpful, both before and during meetings.

# ESSENTIAL SKILLS: STAFFING A PUBLIC MEETING

## RESOURCES INDEX

TAB	SOURCE	TITLE
1.	GIS	500' and 1,000' radius maps for legislative body
2.	GC § 54950, et seq.	Ralph M. Brown Act
3.	GC § 54954.2	Urgency Items not on the Agenda
4.	GC § 54957.1	Reporting Out of Closed Session
5.	GC § 54957.9	Willful Interruptions that Disrupt Meetings
6.	Fair Political Practices Commission	Conflict of Interest Rules, Disqualifications
7.	California Attorney General	The Brown Act: Open Meetings for Local Legislative Bodies (2003)
8.	Institute for Local Government	The ABCs of Open Government Laws (2015)
9.	Institute for Local Government	Attributes of Exceptional Councils
10.	Institute for Local Government	Dealing with Deeply Held Concerns and other Challenges to Public Engagement Processes (Oct. 2012)
11.	Institute for Local Government	A Note on Votes Required for Action as Referenced in Judge Rosenberg's Video
12.	Institute for Local Government	Preparing for Public Hearings (2009)
13.	Institute for Local Government	Public Service Ethics Laws (2016)
14.	Institute for Local Government	Tips for Promoting Civility in Public Meetings (Dec. 2011)
15.	Institute for Local Government	Understanding the Role of Chair (2011)
16.	League of California Cities	Counsel and Council: A Guide for Building a Productive Employment Relationship (2022)
17.	League of California Cities	Open & Public V, a Guide to the Ralph M. Brown Act (2016)
18.	League of California Cities	Providing Conflict of Interest Advice (2022)
19.	League of California Cities	Simple Parliamentary Procedures Cheat Sheet, Adapted from Rosenberg's Rules (2011)
20.	League of California Cities	Unraveling Some Common Procedural Tangles (2007)
21.	League of California Cities	Voting Requirements: Absences, Vacancies, Abstentions and Disqualifications (May 2006)
22.	Rosenberg's Rules of Order	Simple Rules of Parliamentary Procedure for the 21st Century, Revised 2011