RESOLUTION R2016-5

POLICY RESOLUTION NO. 10

POLICY RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, REGARDING NORMS OF OPERATION AND RULES OF ORDER AND PROCEDURE FOR CITY ESTABLISHED BOARDS, COMMISSIONS AND COMMITTEES, UPDATING CITY POLICY RESOLUTION NO. 10

WHEREAS, the City Council recognizes the value of public participation in the affairs of City government, and the City Council seeks ways to encourage effective participation by City residents and members of the general public; and

WHEREAS, the City has an interest in establishing and operating City boards, commissions, and committees in a manner that most effectively utilizes the valuable time of participating members; and

WHEREAS, the City Council has broad authority to appoint members of the public to serve on City established boards, commissions, or committees for the purpose of providing recommendations to the City Council, and the City Council has limited authority to delegate decision making authority to City boards, commissions, or committees; and

WHEREAS, in establishing and operating City boards, commissions, and committees, the City is required to comply with particular provisions of State law such as the Brown Act (California Government Code Section 54950 et seq.), the Political Reform Act (California Government Code Sections 81000, *et seq.*), and the Maddy Act (California Government Code Sections 54970, *et seq.*); and

WHEREAS, in order to comply with legal requirements and achieve the City goals summarized above, the City Council has previously adopted Policy Resolution No. 10, as updated on November 6, 2007, May 6, 2008, June 21, 2011 (R2011-82), and most recently on June 4, 2013 (R2013-43, hereinafter referred to as the "2013 Policy Resolution") to establish procedures by which City boards, commissions, and committees are operated; and

WHEREAS, on October 13, 2015, the City Council provided general direction to City staff to update the procedures for evaluating applications, interviewing applicants, and appointing members to City boards, commissions, and committees (which are represented in subsections 4.3 through 4.8 of Exhibit "B"); and

WHEREAS, updates to State law related to the Brown Act and the Political Reform Act warrant corresponding updates to the summaries of those State laws, as set forth in Exhibits "A" and "B" to the 2013 Policy Resolution.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Napa, as follows:

1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the City Council's adoption of this Resolution.

2. The City Council hereby repeals the 2013 Policy Resolution (R2013-43).

3. The City Council hereby adopts Policy Resolution No. 10, as set forth in Exhibit "A," attached hereto and incorporated herein by reference.

4. The City Council hereby authorizes the City Attorney to attach to this Resolution a summary of the requirements of the Brown Act, as relevant to the responsibilities of members of Commissions, and to update that attached summary as necessary to describe the requirements of State law (see Exhibit "B").

5. The City Council hereby authorizes the City Attorney to attach to this Resolution a summary of the requirements of the Political Reform Act (and related conflict of interest laws), as relevant to the responsibilities of members of Commissions, and to update that summary as necessary to describe the requirements of State law (see Exhibit "C").

6. This Resolution shall take effect immediately upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 19th day of January, 2016, by the following vote:

AYES: Inman, Mott, Luros, Sedgley, Techel

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST: _____
Dorothy Roberts
City Clerk

Approved as to form:

_____
Michael W. Barrett
City Attorney

To: Tiffany Carranza, City Clerk
From: Michael W. Barrett, City Attorney
Date: November 13, 2020

Subject: Update to Policy Resolution Nos. 10 and 19, Exhibits B and C, Summarizing the Brown Act and Conflict of Interest Limitations

This memo documents my approval of the attached updates to Exhibits B and C for both Policy Resolution Nos. 10 and 19. As summarized in this memo, the attached updated versions of these exhibits are necessary to describe relevant updates to State law. I request that these exhibits be inserted into the online versions of the policy resolutions, to replace the existing versions of those exhibits.

Policy Resolution No. 19 (R2016-6) was approved by City Council on January 19, 2016, and it establishes Norms of Operation and Rules of Order and Procedures for Conducting City Council Meetings. Exhibit "B" to Policy Resolution No. 19 summarizes the requirements of the Brown Act (open meeting laws); and Exhibit "C" to Policy Resolution No. 19 provides an Overview of Conflicts of Interest Laws and Regulations. Sections 3 and 4 of Policy Resolution No. 19 authorize the City Attorney to update Exhibits "B" and "C" as necessary to describe the requirements of State law.

Policy Resolution No. 10 (R2016-5) was approved by City Council on January 19, 2016, and it establishes Norms of Operation and Rules of Order and Procedures for City Established Boards, Commissions and Committees. Exhibit "B" to Policy Resolution No. 19 summarizes the requirements of the Brown Act (open meeting laws); and Exhibit "C" to Policy Resolution No. 19 provides an Overview of Conflicts of Interest Laws and Regulations. Sections 4 and 5 of Policy Resolution No. 10 authorize the City Attorney to update Exhibits "B" and "C" as necessary to describe the requirements of State law.

Please let me know if there are any questions.

cc: Steve Potter, City Manager
Department Heads
City Commissioners and Staff Managers

EXHIBIT "A"

Policy Resolution No. 10

1. **Adoption.**

The City Council hereby approves the updated Policy Resolution No. 10 (hereinafter referred to as "Policy Resolution No. 10" or "this resolution"), as set forth herein.

2. **"Commissions" Subject to this Resolution.**

2.1. This resolution is intended to apply to all "Commissions" as defined herein. For the purpose of this resolution, the term "Commission" shall mean any body of people, created by City Charter or formal action of the City Council, to act in an advisory or decision making capacity regarding matters within the subject matter jurisdiction of the City (subject to the exceptions set forth in Sections 2.3 and 2.4, below). The term "Commission," as defined herein, may be used to refer to bodies or groups of people that also use some other name, such as a "board," or "committee."

2.2. The City Clerk shall keep an up to date list of all Commissions subject to this resolution. Examples of "Commissions" subject to this resolution include: Bicycle and Trails Advisory Commission, Building and Fire Code Board of Appeals, Community Development Block Grant Committee, Cultural Heritage Commission, Disability Access Board of Appeals, Parks and Recreation Advisory Commission, Planning Commission, Senior Advisory Commission, and Tree Advisory Commission.

2.3. The following bodies of people are specifically excluded from the definition of "Commission" for the purpose of this resolution:

2.3.1. Any separate legal entity created by City Charter or formal action of the City Council, including: the Successor Agency to the Napa Community Redevelopment Agency, the Housing Authority of the City of Napa, the Parking Authority of the City of Napa, the City of Napa Public Facilities Financing Authority, and the City-Housing Authority Building Authority.

2.3.2. The Civil Service Commission.

2.3.3. Any body of people that is not defined as a "legislative body" pursuant to the Brown Act (California Government Code Section 54951). As an example, an "advisory committee" to the City Council is not a "legislative body" under the Brown Act as long as: (a) it is composed solely of less than a quorum of the members of the City Council, and (b) it does not have a continuing subject matter jurisdiction or a meeting schedule set by formal action of the City Council.

2.3.4. Any body of people that is created by the action of another governmental agency or private entity (hereinafter "Non-City Entity"), even if the City

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Council appoints one or more members; for example: Napa County Library Commission, Napa County Mosquito Abatement District, and Napa Sanitation District.

2.4. It is beyond the scope of this resolution to regulate the conduct of members of a Non-City Entity. However, to the extent that the City Council is authorized to appoint members to a Non-City Entity, the City Council shall follow the processes for selection of members to Commissions set forth in this resolution (particularly Section 4) to evaluate and appoint members to Non-City Entities. The City Clerk shall keep an up to date list of all Non-City Entities subject to these selection processes.

3. **Purpose and Goals.**

3.1. This resolution is intended to provide guidelines for each Commission regarding norms of operation and rules of order and procedure for the conduct of Commission meetings, and guidelines for the conduct of each member of a Commission.

3.2. Each Commission is encouraged to adopt its own rules of procedure or by-laws to govern the conduct of the Commission's activities. However, if there is any conflict between this resolution and any rules of procedure established by a Commission, the provisions of this resolution shall take precedence.

3.3. Each Commission shall conduct its meetings in an open and public manner in accordance with the "Brown Act" (California Government Code Section 54950 et seq.), and in a manner that will provide reasonable and equitable opportunities for representatives of all sides of an issue to civilly present their ideas and concerns to the Commission. A summary of the requirements of the Brown Act is set forth on Exhibit "B," attached hereto and incorporated herein by reference.

3.4. Each Commission member shall avoid conflicts of interest and comply with the requirements of the Political Reform Act, as summarized in this resolution (particularly Section 5.6; and Exhibit "C," attached hereto and incorporated herein by reference).

3.5. Each Commission shall take action on only those items that are within the subject matter jurisdiction of the Commission, as authorized by the City Council.

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4. **Qualifications of Commission Members, and Appointments to Commissions.**

4.1. The requirements set forth in this Section 4 shall apply to the City Council's appointment of members to Commissions; provided, however, the City Council may, by ordinance or resolution modify any of the requirements set forth in this Section 4 for one or more of the Commissions.

4.2. Annual Notice: The City Clerk shall annually publish the Local Appointments List for all Commissions pursuant to the requirements of the Maddy Act (California Government Code Sections 54970, *et seq.*). The Maddy Act generally requires the Local Appointments List to include a list of each Commission, all appointive terms that will expire in the following calendar year, the name of the incumbent, the date of appointment, the date the term expires, and the necessary qualifications for the position.

4.3. Notice of Vacancy: When there is a vacancy for a position on a Commission, whether the vacancy is due to the expiration of a term or otherwise, the City Clerk shall publish a notice of the vacancy and solicit applications from applicants in a manner that will encourage participation from qualified applicants representing a cross-section of the community, in accordance with the following:

4.3.1. If the vacancy is based on the expiration of a term, the City Clerk shall provide written notice to the incumbent to provide an opportunity for the incumbent to apply for another term.

4.3.2. In addition, the City Clerk shall post the vacancy in accordance with the requirements of the Maddy Act, which generally requires a notice of any unscheduled vacancies to be posted at the City Clerk's Office and the library, not earlier than 20 days before the vacancy, not later than 20 days after the vacancy, and not later than 10 working days prior to appointment by the City Council.

4.3.3. Written notices of vacancy shall identify the requirements for submitting written applications (including application format, which may include an option for submittal of online applications, and deadline for submission), and shall outline the procedures for City Council's consideration of applications (including the interview and appointment process).

4.4. Written Applications: Any person desiring to be considered for appointment to any Commission shall complete a written application, on a form provided by the City Clerk (which may include an option for submittal of online applications). Each applicant shall provide sufficient information to demonstrate that the applicant meets or exceeds the minimum qualifications for membership on the Commission, and to demonstrate the applicant's interest in the position. The written applications shall be considered by the City to be public records (subject to public disclosure under the Public Records Act, California Government Code Section 6250, *et seq.*), and copies of the written applications shall be distributed

to members of City Council and made available to the public pursuant to City policy for the conduct of Council meetings (Policy Resolution No. 19). Provided, however, individual exceptions to public disclosure may be applied to portions of the applications (such as the redaction of personal identifying information; e.g., addresses and phone numbers)

4.5. Evaluation Criteria: When evaluating the qualifications of any applicant for appointment to a vacant position on a Commission, the City shall consider the following criteria:

4.5.1. The City Council will consider whether the applicant meets or exceeds the minimum qualifications for membership on the Commission, including any special requirements for the particular vacant seat on the Commission, and the extent to which the applicant has demonstrated an interest in the position.

4.5.2. No City employee may be appointed as a member of a Commission.

4.5.3. Unless otherwise specified by Council ordinance or resolution, a member of a Commission shall be a full-time resident and registered voter of the City of Napa at the time the City Clerk provides written notice of the vacancy (pursuant to Section 4.3 of this resolution).

4.5.4. The City Council will consider the effect of any potential incompatible offices currently held by the applicant. (See Exhibit "C.")

4.5.5. The City Council will not appoint a person to serve simultaneously on more than one Commission unless: (a) at least one Commission is of a limited term, and (b) there is no resulting incompatibility of offices.

4.5.6. The City Council will consider potential conflicts of interest which could require the applicant to recuse himself or herself from participation in matters with the subject matter jurisdiction of the Commission. (See Exhibit "C.")

4.5.7. The City Council will consider the applicant's availability to serve on the Commission for the identified term of the appointment, as described in Section 4.6 of this Resolution.

4.6. Commissioner's Term of Office:

4.6.1. The full term of each member of a Commission shall be two years (unless otherwise specified by ordinance or resolution of the City Council for a particular Commission); provided, however, if the full term of any member expires, that member shall continue to hold the office as a Commission member until his or her successor has been duly appointed by City Council. In an effort to encourage participation on Commissions by a broad range of members of the community, the City Council may limit the term of an incumbent to two full terms; provided, however, the City Council may reappoint a Commission member beyond the limit of "two full terms" if the

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Council determines that circumstances warrant the reappointment of a particular incumbent.

4.6.2. If there is a vacancy on a Commission prior to the expiration of an existing term of an appointed Commissioner, the vacancy shall be filled for the unexpired portion of the existing term.

4.6.3. Notwithstanding the limitation of Section 4.6.2, above, if there is a vacancy on a Commission prior to the expiration of an existing term of an appointed Commissioner, and the remaining term is less than one year, the City Council may, at the time of appointment, either: (a) appoint a Commission member for the unexpired remaining term; or (b) appoint a Commission member for the unexpired remaining term plus an additional full term.

4.6.4. Each member of a Commission serves at the pleasure of the City Council, and any member of a Commission may be removed by the Council at any time (based on a majority vote of the quorum of the City Council in attendance at the Council meeting) without any showing of cause for removal.

4.7. Three Alternative Appointment Processes: The City Council shall evaluate applicants and make an appointment for each vacant position on a Commission, using one of the three following processes:

4.7.1. The City Council may waive the interviews and make appointments at a noticed public meeting, open to the public under the Brown Act, based on applications received, and based on the selection criteria set forth in Section 4.5 of this Resolution.

4.7.2. The City Council may appoint two members of Council to serve as a Nomination Committee in order to evaluate and interview applicants and make recommendations to City Council for final action to appoint a member to a Commission. Any meetings of the Nomination Committee to evaluate or interview applicants and formulate recommendations to be presented to the Council shall be conducted as a part of a noticed public meeting, open to the public under the Brown Act; with the City Clerk acting as Secretary to the Nomination Committee, and the Staff Managers (for each Commission with a vacancy being considered) in attendance. The Nomination Committee shall consider the selection criteria set forth in Section 4.5 of this Resolution. The City Clerk shall present recommendations from the Nomination Committee to the City Council, and the City Council may either approve the recommendations as submitted, or take further action to evaluate the applicants and make appointments in accordance with Sections 4.5 through 4.8 of this Resolution.

4.7.3. The City Council may invite applicants to a public interview by the City Council, to be conducted in accordance with Section 4.8 of this Resolution.

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4.8. Council Interview Selection Processes: Any interview conducted by City Council, of applicants for appointment to a Commission, shall be conducted as a part of a noticed public meeting, open to the public under the Brown Act. Following public interviews of applicants, the Council shall first determine the number of open seats on the commission to be filled by the applicants interviewed. The Council shall then vote to determine which applicants will be appointed to fill each open seat of each commission. For each open seat of each commission, each member of Council will cast one vote (on a written ballot identifying the name of the member of Council and the votes cast). Each member of Council will cast no more than one vote per applicant. For each open seat, the applicant who receives the greatest number of votes (at least a majority of the quorum of voting members of Council) shall be appointed to the open seat. If, following this vote, all open seats are not filled, the Council may either repeat this process to fill the remaining open seats (eliminating from consideration the applicants who received the least number of votes), or direct staff to take additional actions to fill the remaining open seats in accordance with Sections 4.3 through 4.8 of this Resolution.

4.8.1. The City intends this selection procedure to be public and without concealment. The written ballots are public records, the vote of each member of Council will be read into the record by the City Clerk during the meeting and will be made a part of the written record of the meeting, and copies of the written ballots will be made available to the public pursuant to the Public Records Act.

5. **Responsibilities of Commission Members, and Communications Between Commission Members, City Council, City Staff, and Members of the Public.**

5.1. When publicly communicating regarding matters within the subject matter jurisdiction of the Commission (including participating in public Commission meetings, communicating with other City officers or officials, and communicating with members of the public), each Commission member shall conduct himself or herself with professional respect and civility, in accordance with all requirements established by the City Council and the Commission, including any City Council ordinances or resolutions (including this Resolution), and any Commission bylaws, resolutions, or rules of conduct.

5.1.1. Each Commission member shall make an effort to educate himself or herself regarding the role and scope of the Commission's authority. This shall include evaluating and seriously considering, prior to each Commission meeting, specific issues that will be presented during the Commission meeting. Each Commission member shall be prepared to fully discuss during each meeting the issues on the meeting agenda.

5.1.2. When researching and evaluating issues prior to each meeting, and when considering information presented during the meeting, each Commission

member shall keep an open mind to considering alternative viewpoints, and each Commission member shall carefully weigh the pros and cons of each alternative. When considering alternatives, each Commission member shall consider the benefits and burdens on the community as a whole, and shall not give undue weight to the interests of special interest groups.

5.2. Each Commission member shall comply with the requirements of the "Brown Act" (see summary on Exhibit "B"). In particular, Commission members shall not communicate with one another (outside of open and public Commission meetings) in a way that will cause a majority of the Commission members to "hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction" of the Commission or the City. For example, on a five member Commission, the Brown Act precludes a "serial meeting" by which Commissioner "A" discusses a matter with Commissioner "B," and then Commissioner "B" separately discusses the same matter with Commissioner "C."

5.3. Commission members and Council members shall conduct themselves consistent with their respective roles and responsibilities.

5.3.1. The City Council establishes legislative policy direction within which each Commission operates, and the Council establishes the scope of responsibility for each Commission. To the extent a Commission votes to find that modifications are warranted to legislative policies or a Commission's scope of responsibility, the Commission may request the Staff Manager to forward to the City Council a recommendation for modification for Council's consideration. Each Commission is encouraged to provide any such recommendations to the Council on an annual basis as a part of the City Council's consideration of the budget.

5.3.2. The City Council has delegated authority to the City Manager to establish the scope of City staff support available to each Commission. To the extent a Commission votes to find that additional City staff resources are warranted to address a particular issue, Commission may request the Staff Manager to forward to the City Manager a request for additional resources for the City Manager's consideration. Each Commission is also encouraged to provide any such recommendations to the Council on an annual basis as a part of the City Council's consideration of the budget.

5.3.3. A Commission may make recommendations to City Council to support or oppose a ballot measure or State or Federal legislation. However, no Commission is authorized to take an action to independently support or oppose a ballot measure or State or Federal legislation.

5.3.4. In an effort to encourage independent advice to the City Council from Commissions, the City Council has adopted procedures (set forth in Policy Resolution No. 19) that require members of Council to refrain from using their position to unduly influence the deliberations or actions of Commission proceedings.

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5.3.5. The City Council may request a Commission to attend a joint meeting of the City Council and the Commission to review activities of the past year, as well as work programs, objectives, and goals for the coming years.

5.3.6. The City Council or the City Manager may request the Chair, or a representative selected by the Commission, to publicly present positions of the Commission to the City Council or community groups. In these circumstances, the recommendations and actions of the full Commission shall be clearly communicated, including an identification of majority and minority positions.

5.3.7. In the absence of a request from the City Council or the City Manager, a Commission member may appear before the City Council or a community group, in the same manner as any other member of the general public, solely to represent the member's personal interests. However, under such circumstances, the member of Commission shall clearly indicate that the member's comments are based on the member's personal interests, and that the member is not authorized to speak on behalf of the Commission.

5.4. Members of Commission and City staff shall conduct themselves consistent with their respective roles and responsibilities. City staff shall acknowledge and respect each Commission's role (in an advisory or decision making role) as an appointed representative of the City Council. Commission members shall acknowledge and respect the City staff's role in administering City Council policies, as directed by the City Manager.

5.4.1. The City Manager shall assign a Staff Manager to each Commission to coordinate the provision of staff support to the Commission.

5.4.2. If any Commission member has any question regarding the Commission member's responsibilities or authority, the Commission member shall contact the Commission's Staff Manager. To the extent the Staff Manager has any legal questions regarding the responsibilities or authority of the Commission, the Staff Manager shall work with the City Attorney to obtain legal assistance.

5.4.3. The Staff Manager shall appoint a Secretary to the Commission to assist the Commission in complying with all procedural requirements of this Resolution, particularly related to the preparation of meeting agendas, notices, reports, and minutes.

5.4.4. When a Commission makes a recommendation to Council, or a Commission's action is appealed to Council, City staff (through the Commission's Staff Manager) shall clearly communicate to City Council the recommendations and actions of the full Commission, including an identification of majority and minority positions. In some circumstances, the recommendation of City staff may differ from the Commission's recommendations or actions, in which case each position will be clearly presented to Council by City staff.

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5.4.5. The City Manager is responsible for determining the administrative and operational structures of City staff to deliver the staff support, through the Staff Manager, to each Commission. Commission members will not interfere with the City Manager's executive or administrative authority, as implemented by the Staff Manager. If a Commission member has any questions or concerns regarding the level or quality of staff support provided to the Commission, the Commission member may communicate the concern privately to the Commission's Staff Manager or the City Manager to ensure that the concern is resolved (in order to avoid possible inadvertent public disclosure of confidential personnel matters).

5.4.6. The City Manager is authorized to establish and maintain written administrative regulations to implement the policies set forth in this resolution. The City Manager may delegate the duties and authority set forth in this resolution to Staff Managers, Commission Secretaries, the City Clerk, or other qualified City employees, to be documented as a part of the administrative regulations.

5.4.6.1. The City Manager may include in the administrative regulations clarifications of protocols for communications between City staff and members of Commission, in order to ensure that each member of Commission has equal access to information from City staff. These protocols may also include the manner by which written communications addressed to members of Commission will be handled by City staff.

5.4.6.2. A copy of the administrative regulations shall be maintained in the office of the City Clerk. The administrative regulations shall be recommended for approval by the Commission's Staff Manager, and subject to approval as to form by the City Attorney.

5.5. Each year, the Commission shall vote to elect a Chair and Vice Chair. The Commission is encouraged to annually rotate the responsibilities of Chair and Vice-Chair so that each Commission member has an opportunity to serve in each position. The responsibilities and authority of the Chair are set forth in Section 9.1 of this Resolution. In general, the Chair is responsible for exercising judgment in managing the conduct of the meeting so that the overall goals of this Resolution are met. The Chair must be able to enforce the rules of conduct to facilitate civil participation by potentially opposing points of view, to keep the topics of discussion focused on issues relevant to the item being considered by the Commission, to prohibit conduct that is out of order, and to ensure the Commission's actions are taken in a manner that is clear and understandable to the public. The Chair may also be requested by the City Council to publicly present actions taken by the Commission.

5.6. Each Commission member shall comply with the requirements related to avoiding conflicts of interest, and complying with the Political Reform Act (see summary on Exhibit "C").

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5.6.1. In particular, Commission members shall recuse themselves from participating in any item action that will have a reasonably foreseeable material financial effect upon a Commission member's economic interest, and annually provide to the City Clerk the disclosures required by FPPC's "Form 700."

5.6.2. Under the common law doctrine of incompatibility of offices, a Commission member may automatically (even inadvertently) forfeit a position on a Commission by accepting an appointment to an incompatible position.

5.7. Each Commission member is required to attend each Commission meeting, unless the member identifies a reasonable good faith reason for the absence, and the absence is excused by a vote of the Commission. If a Commission member anticipates being absent from or late to any Commission meeting, the Commission member shall provide prior notice to the Secretary or the Staff Manager.

5.7.1. If a Commission member is absent without excuse for three consecutive Commission meetings, or if a Commission member is absent from service more than 60 days (with or without excuse), the Staff Manager shall provide written notice to the Commission member specifying the date on which the absences will be reported to the City Council at a public meeting. During the meeting, the City Council may either: (a) remove the Commission member and declare the position vacant, or (b) approve a leave of absence for the Commission member for a specified length of time.

5.8. Commission members may retain membership on a Commission while seeking elective office. However, Commission members may not use Commission meetings for the purpose of campaigning for elective office.

5.9. Unless otherwise specified by City Council ordinance or resolution, each Commission member shall serve without compensation by the City.

5.10. Each Commission member shall provide the Secretary and the City Clerk with up to date contact information for the purpose of communications from City staff to Commission members, pursuant to the requirements of this Policy. Notices delivered by City staff to Commission members, based on the contact information provided by each Commission member, shall serve as sufficient notice (as described in Sections 4, 7.1, and 7.6 of this Policy).

6. **Regular Meetings of Commissions.**

6.1. Each Commission shall identify (and amend as necessary), by resolution or bylaws, the date, time, and place of each regular meeting; provided, however, (a) the City Council may establish the regular meeting schedule of any Commission, or (b) the City Council may designate a commission as a "standing

committee" for which no regular meetings are scheduled. (See California Government Code Sections 54954 and 54952(b); and, e.g., Napa Municipal Code Section 15.04.100 regarding the status of the Building and Fire Code Board of Appeals as a standing committee.)

6.2. The agenda for each regular meeting shall identify the date, time, and place of the meeting, with a brief general description of each item of business to be transacted or discussed at the meeting, and the order of business. The form of the agenda shall be subject to review and approval as to form by the City Attorney. The agenda shall be posted at least 72 hours before the meeting at a location that is freely accessible to members of the public (see California Government Code Section 54954.2), and a copy of each agenda shall be filed with the City Clerk.

6.3. The agenda for each regular meeting shall identify the scheduled order of business. The agenda shall be established by the Staff Manager according to the guidelines set forth in Section 8 of this Resolution; however, the Chair may modify the order of business if it is determined that the modification will facilitate the efficient and fair conduct of the meeting. The order of business as established by the Staff Manager or the Chair may be overridden by a vote of the Commission per Section 8.2 of this Resolution.

6.4. Each regular meeting shall be conducted at a location within the City limits, unless the Staff Manager determines, after consulting with the City Attorney, that a meeting is authorized outside the City limits pursuant to California Government Code Section 54954(b). Each regular meeting shall be open to the public pursuant to California Government Code Section 54953(a).

7. **Types of Commission Meetings.** In addition to holding regular meetings, as described above, a Commission may conduct any of the following types of meetings in accordance with the Brown Act:

7.1. Special Meetings.

7.1.1. A special meeting may be called at any time by the Chair, or by a majority of the members of Commission. The agenda notice of the special meeting shall be prepared by the Secretary and delivered in accordance with California Government Code Section 54956 and Section 5.10 of this Policy.

7.1.2. The agenda notice for each special meeting shall comply with the requirements of Sections 6.2 and 6.3 of this Resolution; provided, however, the time for posting the agenda shall be at least 24 hours before the time of the meeting.

7.1.3. Each special meeting shall be conducted at a location in compliance with Section 6.4 of this Resolution.

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7.2. Closed Sessions. A Commission may be authorized to meet in a closed session meeting, not open to the public, as a part of any noticed regular meeting or special meeting; provided, however, prior to scheduling or conducting a closed session, the Commission's Staff Manager shall obtain approval from the City Attorney regarding the authorized scope of the closed session discussion. The subject matter of any closed session meeting shall be limited to the topics authorized by the Brown Act, and notices of closed session topics shall be made as required by the Brown Act, as generally summarized by California Government Code Section 54954.5.

7.2.1. The Commission shall publicly report any action taken in closed session pursuant to California Government Code Section 54957.1.

7.2.2. The City Council designates the Secretary to attend closed session meetings of the Commission and keep confidential closed session minutes, pursuant to California Government Code Section 54957.2.

7.3. Adjourned Meetings. Any regular meeting or special meeting may be adjourned to a different date, time, and/or place as specified in an order of adjournment posted pursuant to California Government Code Section 54955. (See also Subsection 10.4.4.1.)

7.4. Continued Hearings. Any hearing (that is noticed to be held by the Commission at any regular meeting or special meeting) may be continued to a different date, time, and/or place as specified in an order or notice of continuance posted pursuant to California Government Code Section 54955.1.

7.4.1. Items that are continued from one meeting to a subsequent meeting shall be provided preference for consideration by Commission at the subsequent meeting.

7.5. Joint Meetings. The Commission may jointly meet with another legislative body (such as the City Council) as a part of any noticed regular meeting or special meeting of the Commission.

7.6. Emergency Meetings. The Commission may be authorized to hold an emergency meeting if a majority of the members of the Commission determines that there is an "emergency situation" as defined by California Government Code Section 54956.5. The Secretary shall provide notice of the emergency meeting as required by California Government Code Section 54956.5, which generally requires notice to be provided one hour prior to the meeting. The Secretary shall also provide notice to each member of Commission pursuant to Section 5.10 of this Policy.

7.7. Teleconference Meetings. The Commission may be authorized to connect less than a quorum of individual members of the Commission to any regular meeting or special meeting by "teleconferencing" (connecting the Commission members to the meeting by electronic means, through either audio or video, or both)

pursuant to the requirements of the Brown Act (California Government Code Section 54953). The Commission may vote to request authorization from City Council to connect to a particular meeting by teleconferencing. If the City Council determines that teleconferencing is warranted for the benefit of the public and the Commission for that particular situation, the City Council may direct the Staff Manager to implement a teleconferenced meeting pursuant to the requirements of the Brown Act.

8. **Order of Business for Regular Meetings.** The City will endeavor to maintain a consistent order of business for agenda items for regular meetings pursuant to the guidelines set forth in this Section 8; however, exceptions may be warranted based on unusual or unexpected circumstances in order to facilitate the efficient and fair conduct of the meeting.

8.1. Call to Order. The Chair will call each regular meeting to order.

8.2. Agenda Review. If it is determined (by the Chair, the Staff Manager, or a vote of Commission) that there is a need for any changes to the order of business for the agenda in order to facilitate the efficient and fair conduct of the meeting, it is appropriate to identify the changes at the beginning of the meeting. However, changes to the order of the agenda may be approved by the Chair or a vote of the Commission at any time during the Commission meeting.

8.2.1. Factors which may be considered in changing the order of business for the agenda include: the number of speakers who wish to address the Commission for particular items, the estimated time required to consider and act on the items on the agenda, the time available to address items on the agenda, and any other factors that are unusual or were unanticipated at the time the agenda was prepared.

8.3. Public Comment.

8.3.1. The Public Comment period provides an opportunity for members of the public to directly address the Commission on any item of interest to the public that is within the subject matter jurisdiction of the Commission. (California Government Code Section 54954.3.)

8.3.2. Unless otherwise specified in Commission Bylaws, or modified pursuant to Resolution Section 9.1.4, each speaker's comments will be no more than three minutes, and will comply with the requirements of this Resolution.

8.3.3. If the subject of the comments is covered under an item on the meeting agenda for which Commission will separately hear public comments (such as Hearings and Appeals), the member of the public may be requested to reserve comments to the appropriate time on the agenda.

8.3.4. If the subject of the comments is covered under an item on the meeting agenda for which Commission is not required to separately hear public comments (such as Consent Calendar), the member of the public may make the comments during the Public Comment period, and/or request

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Commission (subject to approval by the Chair or a vote of the Commission) to accept public comment prior to taking action on the item.

8.3.5. If the subject of the comments is not covered under an item on the meeting agenda, the Brown Act strictly limits the Commission's ability to respond. (California Government Code Section 54954.2.) Consistent with the Brown Act, the Commission's response will be limited to either: (1) the Chair or a member of Commission may provide, or the Chair may direct City staff to provide, a brief response to comments made; or (2) a vote of the Commission may request staff to bring back a report in response to the comments at a subsequent meeting.

8.4. Consent Calendar. Consent Calendar items are considered routine, and may be approved by a single vote of the Commission. The Chair or any Commission member may request that any item be removed from the Consent Calendar so that Commission action may be taken separately on the item. Public input will be accepted at this time only if approved by the Chair or a vote of the Commission. Typically, the Consent Calendar may include items such as approval of minutes, second reading of ordinances, appropriation of funds, and approval of contracts.

8.5. Administrative Reports. Administrative Report items include reports and recommendations from City staff that do not require a public hearing prior to action by the Commission. Public input will be accepted for Administrative Reports only upon approval by the Chair or a vote of Commission.

8.6. Hearings and Appeals.

8.6.1. Consent Hearing. If an item is required to be noticed as a public hearing, but the City is not aware of any interest by members of the public to comment on the item, the item may be listed as a "Consent Hearing." For each Consent Hearing item, the Chair shall announce to the public the item to be considered, and ask if there is anyone present who wishes to be heard on the item. If anyone wishes to be heard, the item shall be considered under the processes for a Public Hearing (below). If no person indicates an interest to be heard, the Commission may consider the public hearing to have been opened and closed, and the Commission may take action on the item.

8.6.2. Public Hearings.

8.6.2.1. For each Public Hearing or Appeal, the title of the item to be heard will be announced, and the Chair shall announce the opening of the public hearing for the item. The time limits for each speaker set forth herein may be modified by Commission bylaws. After opening the public hearing:

8.6.2.2. The Chair or any member of the Commission may request a report from City staff to summarize the item to be considered, or to address specific items of concern.

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8.6.2.3. The Chair shall ask each member of Commission to disclose the nature and substance of any information received prior to the hearing (that is not included in the information presented during the hearing) that could be relevant to the decision making process for the item (such as site visits or communications with constituents).

8.6.2.4. The applicant or appellant shall have the first opportunity to present testimony. The applicant or appellant shall be provided ten minutes for the opening statement.

8.6.2.5. Members of the public shall then be provided up to three minutes each to present testimony or comments during the public testimony portion of the public hearing (subject to modification pursuant to Section 9.1.4). When the Commission determines that all members of the public have had an opportunity to present testimony or comments (pursuant to Subsections 9.1 and 9.3), the public testimony period may be closed by vote of the Commission. After the public testimony period is closed, it may be reopened only by a vote of the Commission. Following the close of the public testimony period, the Commission may request additional information during the public hearing pursuant to Subsections 8.6.2.7 without necessitating a "reopening" of the public testimony period.

8.6.2.6. The applicant or appellant shall be provided five minutes for a closing statement at the end of the public testimony portion of the public hearing.

8.6.2.7. During the public hearing, the Commission (by the Chair, or a vote of the Commission) may request additional information from City staff, the applicant or appellant, or members of the public. In requesting additional information, the Chair shall have the authority, pursuant to Resolution Section 9.1, to direct the speaker to limit comments to a particular topic (avoiding duplication of comments already made), and to limit comments to a particular amount of time. The Chair shall also have the authority, pursuant to Resolution Section 9.1, to allow limited rebuttal testimony, including direction to the rebuttal speaker to limit comments to a particular topic (avoiding duplication of comments already made), and to limit comments to a particular amount of time.

8.6.2.8. When the Commission determines it has received sufficient relevant information to render a decision on the item, the public hearing may be closed by vote of the Commission. After the public hearing is closed, it may be reopened only by a vote of the Commission.

8.6.2.9. After closing the public hearing, members of Commission may deliberate among themselves regarding the information presented during the hearing. Additional testimony may be taken after the public hearing is closed only by vote of the Commission to reopen the public hearing. Members of Commission shall refrain from deliberating on an item until after the public hearing is closed.

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8.6.2.10. After closing the public hearing, the Commission may take action on the item.

8.7. Brief Comments by Commission or Staff Manager. A member of Commission or the Staff Manager may ask a question for clarification, make a brief announcement, or make a brief report of his or her activities relevant to the subject matter jurisdiction of the Commission. (California Government Code Section 54954.2.) An individual member of Commission may request staff to report back on a matter or place a matter for discussion on a subsequent meeting agenda (including a motion for reconsideration under Section 10.6.4), subject to approval of direction to staff by a vote of the Commission. Depending on the scope of the Commission's request, the Staff Manager may need to seek approval from the City Manager or the City Council before devoting City resources to the request.

8.8. Closed Session. The last item on the public agenda shall be the announcement of items of closed session (if any), pursuant to Section 7.2 of this Resolution.

8.8.1. Each member of Commission and City staff shall maintain the confidentiality of any written or oral information provided during closed session meetings.

8.8.2. No member of Commission or City staff shall reveal any confidential information communicated during closed session except to the extent authorization is provided by a vote of City Council.

8.9. Report Actions Taken In Closed Session. This is a report of action taken in closed session, if any, as required pursuant to California Government Code Section 54957.1.

8.10. Adjournment. After the Chair determines that all items on the agenda have been addressed by the Commission, which determination may be overridden by a vote of the Commission, the Chair shall announce the meeting is adjourned. This determination that a meeting is adjourned is distinguished from a "motion to adjourn to another time and place" (as set forth in Subsection10.4.4.1).

9. **Conduct of the Meetings.**

9.1. Chair's Authority to Preside Over Commission meetings. The Chair shall preside at all meetings of the Commission, and shall exercise the authority set forth in this Resolution. In the Chair's absence at a Commission meeting, the Vice-Chair shall have all power and authority of the Chair. In the absence of the Chair and the Vice-Chair at a Commission meeting, a majority of the remaining members of the Commission shall appoint a chair to exercise the power and authority of the Chair for that meeting (or portion of a meeting).

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9.1.1. The Chair shall facilitate and guide the meeting in order to achieve the goals of this Resolution.

9.1.2. The Chair shall establish seating assignments for members of Commission.

9.1.3. The Chair shall be entitled to make and second motions, and vote on all items presented to Commission for action.

9.1.4. The Chair may modify (increase or decrease) any time requirement for any speaker (whether a member of the public, or an applicant or appellant at a public hearing), or limit the total amount of time available for any item on the agenda, or limit the total number of speakers for any item on the agenda, or request a spokesperson be identified to represent a group of people to minimize duplication of presentations, to the extent it is determined that one or more of these modifications will facilitate the efficient and fair conduct of the meeting. (California Government Code Section 54954.3(b).) Although a modification of the time requirements for speakers may result in one or more speakers having more or less time than others to present comments to the Commission (based on a weighing of factors such as those set forth in Sections 8.2, 8.6.2.7, and 9.1.5 of this Resolution), any modifications of the time requirements for speakers shall be based on factors that may be equitably applied to all speakers. The Chair may use speaker cards to facilitate the goals set forth in subsections 9.1 and 9.3.

9.1.5. If the Chair determines that any person is out of order based on a lack of compliance with the requirements of this Resolution, the Chair may direct appropriate action to restore order to the meeting.

9.1.5.1. Actions that may be considered out of order by the Chair may include any activity that is inconsistent with the requirements of this Resolution, presentations that are unnecessarily repetitive, presentations that are outside the subject matter jurisdiction of the Commission, presentations that are outside the scope of the agenda item under consideration, presentations made without being recognized by the Chair (for example, speaking from the audience instead of from the lectern, interrupting other speakers recognized by the Chair, or continuing to speak after being identified by the Chair as being out of order), and acting in a manner that is threatening, violent, disruptive, or otherwise impedes the orderly conduct of the Commission meeting.

9.1.5.2. Nothing in this Resolution shall prohibit public criticism of the City's policies, procedures, programs, or services, or of the acts or omissions of the Commission. (California Government Code Section 54954.3(c).)

9.1.5.3. Actions that may be taken to restore order to the meeting may include: call the person to order and require the person to comply with any rule set forth in this Resolution, require the person to terminate his or her remarks, ordering a recess of a specified duration (e.g., 15

minutes), ordering the removal of any person who is found to be willfully disrupting the meeting.

9.2. Rules of Decorum for Members of Commission.

9.2.1. Each member of Commission shall maintain order and decorum in accordance with this Resolution, and shall respect the Chair's authority to conduct each meeting of Commission in accordance with this Resolution, and shall mutually respect the rights of each member to express their positions.

9.2.2. No member of Commission shall disturb, disrupt, or interrupt any other member of Commission, any member of City staff, or any member of the public who is speaking in accordance with this Resolution.

9.2.3. Once a Commission member is recognized to speak, no other person shall interrupt the Commission member, unless the Commission member is called to order by the Chair.

9.2.4. Each member of Commission shall confine his or her remarks to the agenda item under consideration, and shall speak only when recognized by the Chair (unless otherwise provided by this Resolution). An attempt by any member of Commission to make comments or motions that are not related to the item under consideration, or to make repetitive motions on items that have already been considered by Commission, shall be considered out of order.

9.2.5. Each member of Commission shall have a right to be heard on each item on the agenda. No Commission member shall speak more than once on any item on the agenda until every other Commission member has had an opportunity to speak.

9.3. Rules of Decorum for Members of the Public.

9.3.1. During meetings of the Commission, members of the public will have opportunities to address the Commission, as identified in the written agenda for that meeting (See Sections 6.3, 7.1, and 8 of this Resolution). Members of the public desiring to address the Commission shall come forward to the lectern microphone, and shall be requested (but not required) to provide their name, city of residence, and organization represented (if any).

9.3.2. Unless otherwise specified in this Resolution (e.g., public hearings under Section 8.6.2 of this Resolution), or approved by the Chair, each person shall be limited to one presentation per agenda item (no more than three minutes per presentation).

9.3.2.1. In order to monitor compliance with this requirement, the Secretary will indicate (with auditory or visual means) when one minute remains, and when the speaker's time has ended.

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9.3.2.2. If a member of the public needs additional time for a particular agenda item, a request should be submitted for approval by the Chair prior to beginning the presentation.

9.3.3. Comments made by the public during Commission meetings should be directed to the Commission. It is out of order for a member of the public to attempt to directly address members of the audience or members of City staff.

9.3.4. If a member of the public desires to present written communications to the Commission during the Commission meeting, the communication shall be submitted to the Secretary. The Secretary will identify the communication as a part of the minutes of the meeting. Members of the public are requested to provide 15 copies of each written communication so that sufficient copies are available for review during the meeting by Commission, City staff, and members of the public.

9.3.5. Unless otherwise authorized by the Chair, members of the public shall present their comments to the Commission without seeking a dialogue with the Commission. At the close of all comments to the Commission for a particular agenda item, the Chair may direct a response by City representatives to comments made by members of the public.

9.4. Written Reports and Communications to Commission.

9.4.1. For each Commission meeting, in addition to the meeting agenda (described in Sections 6.3 and 7.1 of this Resolution), City staff may prepare a written set of agenda reports (hereinafter "Agenda Reports"). The Agenda Reports are provided directly to each member of Commission, and are available for public review upon request to the Secretary, at least 72 hours prior to a regular meeting of the Commission and 24 hours prior to a special meeting of the Commission.

9.4.1.1. The Staff Manager and the Secretary endeavor to provide documents to each member of Commission (and make the documents available for public review) as early as possible prior to the Commission meeting, particularly for controversial or complicated agenda items (for which there may be voluminous documents included in the agenda report).

9.4.1.2. The Staff Manager and the Secretary endeavor to make documents available for public review in a range of locations (such as the public library, and the internet) that will facilitate public access to public information.

9.4.2. At least one public review set of the Agenda Reports will be available during the Commission meeting. The Secretary will endeavor to provide sufficient public review copies of the Commission agenda and the Agenda Reports to meet the public demand for each meeting.

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9.4.3. If a member of the public requests a written communication be presented to the Commission as a part of a Commission meeting, it may be identified in the minutes as a part of the administrative record of the meeting, subject to the following:

9.4.3.1. If the written communication directly relates to an item on the agenda, and it is received by the Secretary no later than 8 calendar days prior to the meeting, a copy of the communication will be included with the Agenda Reports for that meeting, and the communication will be identified in the minutes of the meeting.

9.4.3.2. If the written communication directly relates to an item on the agenda, and it is received by the Secretary prior to or during the Commission meeting (but later than 8 calendar days prior to the meeting), the Secretary will provide a copy of the communication to each member of Commission, and the communication will be identified in the minutes of the meeting.

9.4.3.3. If the written communication is within the subject matter jurisdiction of the Commission but it does not directly relate to an item on the agenda, the Secretary will provide a copy of the communication to each member of Commission, and it will be identified in the minutes of the meeting.

9.4.3.4. Notwithstanding the above, if the Staff Manager determines (in consultation with the City Attorney) that a written communication is either: (a) outside the subject matter jurisdiction of the Commission, or (b) disruptive to the orderly conduct of the Commission meeting (pursuant to the criteria set forth in Sections 9.1.5 of this Resolution), then: (y) the Secretary will provide a copy of the communication to each member of Commission, but (z) the written communication will be excluded from the meeting and excluded from the minutes of the meeting.

9.4.3.5. Any public record that relates to an agenda item for a Commission meeting, and is distributed to a majority of the members of Commission within 72 hours prior to the meeting, shall be made available for public inspection pursuant to California Government Code Section 54957.5, and shall be identified as part of the minutes of the meeting.

9.5. Meeting Breaks.

9.5.1. The Chair shall have the authority to establish reasonable comfort breaks during the meeting.

9.5.2. The Commission may establish, by written rules of procedure or by-laws, times after which no new items shall be commenced unless authorized by a vote of the Commission. For example, for the City Council: No new item will be commenced after 10:00 p.m., unless authorized by a vote of the City

Council; and meetings will be adjourned at 12:00 a.m., unless extended (in 30 minute increments) by a vote of the City Council.

9.6. Parliamentarian. The parliamentarian shall respond to questions from the Chair or any member of Commission regarding procedure and compliance with this Resolution. For any Commission staffed by an attorney from the City Attorney's Office, that attorney shall be the parliamentarian; otherwise, the Staff Manager shall be the parliamentarian. The Chair shall maintain the authority to make final decisions regarding the conduct of the meeting in compliance with this Resolution. The Chair's decision may be overridden by a vote of the Commission.

10. **Commission Voting.**

10.1. Quorum. Unless otherwise specified by City Council ordinance or resolution, a majority of the total membership of a Commission shall constitute a quorum of the Commission. If less than a quorum of the Commission is in attendance at a Commission meeting, no actions may be taken on behalf of the Commission, and the meeting may be adjourned pursuant to California Government Code Section 54955.

10.2. Responsibility to Vote. Each member of Commission in attendance at a Commission meeting has a responsibility to vote on each item presented to Commission for action, unless the member of Commission recuses himself or herself or abstains from voting in accordance with the following:

10.2.1. Recusal. If a member of Commission has a reasonable good faith belief that the member of Commission is disqualified from voting on an item based on any law related to financial conflicts or bias (for example, California Government Code Sections 1090, 1126, or 87105; see summary of issues to consider related to potential conflicts of interest set forth on Exhibit "C," attached hereto and incorporated herein by reference), the member of Commission shall follow the following procedure:

10.2.1.1. Prior to the Commission meeting, the member of Commission may confer with the Fair Political Practices Commission if there is any doubt as to whether recusal is required, and the member of Commission shall notify the Staff Manager of the potential recusal as early as possible.

10.2.1.2. During the Commission meeting, and immediately prior to the item being considered, the member of Commission shall announce the intention to recuse himself or herself from voting on the item, and disclose the basis for recusal in sufficient detail to be understood by the public.

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10.2.1.3. Prior to the item being considered, the member of Commission shall leave the meeting room until after discussion and action on the item is completed. The member of Commission shall not vote on the item. Provided, however, if the item is on the consent calendar, the member of Commission need not leave the meeting room as long as the Commission member does not vote on the item.

10.2.1.4. The member of Commission shall not use his or her official position to influence the Commission's or the City's action on the item.

10.2.1.5. The member of Commission shall not be counted as a member of the quorum of the Commission for that item. In other words, for the purpose of counting votes for an item, a recusal by a member of Commission shall be equivalent to an excused absence.

10.2.2. Abstention. If a member of Commission has any legitimate basis for not voting on a particular item (other than that set forth in Section 10.2.1 of this Resolution), the member of Commission may abstain from voting by complying with the following procedures:

10.2.2.1. Prior to the Commission meeting, the member of Commission shall notify the Staff Manager of the potential abstention as early as possible.

10.2.2.2. During the Commission meeting, and prior to the vote on the item being considered, the member of Commission shall announce the intention to abstain from voting on the item, and disclose the basis for abstention in sufficient detail to be understood by the public. Examples of legitimate bases for abstention include:

10.2.2.2.1. The member of Commission does not have sufficient information regarding the item under consideration (for example, the item was previously considered by the Commission in the member's absence, and the member of Commission did not have an opportunity to review the record of Commission's previous consideration).

10.2.2.2.2. The member of Commission is concerned about the perception of personal or financial conflict even if there is no reasonable good faith belief of a required disqualification (e.g., an effect on the financial interest of a relative [other than a spouse or dependent of the member of Commission]).

10.2.2.3. Any member of Commission who abstains from voting on an item shall be counted as a member of the quorum of the Commission, and the member shall be counted as acquiescing to the vote of the majority of those members voting on the item; provided, however, that member shall not be entitled to make a motion or make a second on the item, and that member shall not be entitled to make a motion for reconsideration. [As an example of counting votes of abstentions or recusals: (a) 2 yes, 2 no, and 1 abstain would fail; (b) 2 yes, 1 no, and 2

abstain would pass; (c) 2 yes, 2 no, and 1 recuse would fail; and (d) 2 yes, 1 no, and 2 recuse would pass.].

10.2.3. Rule of Necessity. A member of Commission who is recused from acting on an item pursuant to Section 10.2.1 of this Resolution, may be authorized to vote on that item if the member's participation is found to be "legally required" (as defined by California Government Code Section 87101). The fact that a member's vote is needed to break a tie does not make participation "legally required".

10.3. Processing Motions for Commission Action.

10.3.1. At the invitation of the Chair, the Chair or any member of Commission may make a motion for Commission to take action on an item. The motion shall be clearly presented as: "I move that ..." and clearly state the substance of the motion. The motion may be stated by reference to the Item number on the Commission agenda, which shall be interpreted to mean a motion to approve the staff recommendation included in the Commission Reports for the item. For example:

10.3.1.1. "I move approval of the consent calendar."

10.3.1.2. "I move approval of staff's recommendation for Item [state the number of the item]."

10.3.1.3. "I move approval of staff's recommendation for Item [state the number of the item], with the following amendments ..." and clearly state the substance of the amendments.

10.3.2. Before calling for the vote on an item, the Chair or any Commission member other than the maker of the motion shall clearly second the motion. Before the Chair calls for the vote on an item, the Staff Manager, Secretary, or a member of staff directly involved in presenting the item to Commission, may request a clarification of the motion.

10.3.3. Before calling for the vote on an item, the Chair shall identify the makers of the motion and the second, and the Chair shall have the motion clearly repeated by, either: the Chair, the maker of the motion, the Secretary, or a member of City staff.

10.3.4. After the motion is moved, seconded, and repeated, the Chair may invite further discussion on the item, or the Chair may call for the vote on the motion (per Section 10.5 of this Resolution). If there is substantial discussion between the time the motion is repeated and the time the vote is called, the Chair may request the motion to be repeated again per Section 10.3.3 of this Resolution.

10.4. Processing Modified or Multiple Motions for Commission Action.

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10.4.1. Prior to a Commission vote on a motion, the maker of the motion may withdraw the motion without consent of any other member of Commission.

10.4.2. Prior to a Commission vote on a basic motion (under Section 10.3 of this Resolution), any member of Commission may make a motion to amend (or a substitute motion). A motion to amend may include a motion to divide the basic motion into two or more separate motions. The motion to amend (or substitute motion) shall be clearly moved, seconded, and repeated, pursuant to Section 10.3 of this Resolution.

10.4.2.1. If a motion to amend (or substitute motion) is made and seconded, the Commission shall vote on the amended motion (or substitute motion) before voting on the basic motion. If the amended motion (or substitute motion) is approved by Commission, then the basic motion shall be rendered moot. If the amended motion (or substitute motion) is not approved by Commission, then the Chair may call for a vote on the basic motion.

10.4.3. In addition to the basic motion (under Section 10.3 of this Resolution), only one substantive motion to amend (or one substitute motion) shall be in order at any one time. Before a second motion to amend (or substitute motion) will be in order, the first motion to amend (or substitute motion) must be voted on by Commission or withdrawn by the maker of the motion.

10.4.4. Procedural Motions. Notwithstanding the limitation of Section 10.4.3, in addition to the basic motion and any substantive motion to amend (or substitute motion), the following procedural motions shall be in order by any member of Commission at any time; and, upon motion and second, the Chair shall immediately call for a vote on the procedural motion without debate (unless otherwise specified below):

10.4.4.1. Motion to Adjourn to Another Time and Place. A motion to adjourn to another time and place shall identify the date, time, and place to which the meeting shall be adjourned (pursuant to California Government Code Section 54955); and, before calling for the vote on the motion, the motion shall be debatable only as to the date, time, and place of the meeting.

10.4.4.2. Motion to Recess. A motion to recess shall identify the length of the recess; and, before calling for the vote on the motion, the motion shall be debatable only as to the length of the recess.

10.4.4.3. Motion to Continue or Table. A motion to continue or table consideration of an item to a later date shall identify the date, time, and place to which the item will be reopened for consideration by the Commission; and, before calling for the vote on the motion, the motion shall be debatable only as to the date, time, and place at which the time will be brought back to Commission. The Commission may direct the Staff Manager to bring the item back to Commission on a date

uncertain, subject to providing appropriate meeting notices per Sections 6 and 7 of this Resolution.

10.4.4.4. Motion to Limit Debate. A motion to limit debate on a substantive motion previously moved and seconded may either require the Chair to immediately call for the vote on the substantive motion, or it may require the Chair to limit debate on the substantive motion for a specified period of time. This motion is sometimes also referred to as a "call for the question."

10.4.4.5. Point of Order. If any Commission member believes that a rule of conduct for the meeting (including any rule set forth in this Resolution) is not being followed, the Commission member may identify the issue by raising a point of order. If the Chair agrees with the point, then the conduct of the meeting shall be modified to comply with the appropriate rule. If the Chair disagrees with the point, the Chair may be overridden by a vote of the Commission on a motion to comply with the particular point of order.

10.5. Counting Votes for Commission Action.

10.5.1. In calling for a vote by Commission on a motion made and seconded in accordance with Sections 10.3 or 10.4 of this Resolution, the Chair may call for a voice vote to identify each member of Commission in favor of the motion and each member of Commission against the motion. If the vote of each member of Commission may not be clearly determined by voice vote, the Chair may request a roll call vote (by voice or by voting machine).

10.5.2. At the conclusion of the vote, the Chair shall announce the results of the vote. If the vote is not unanimous, the Chair shall identify each member voting in favor and against the motion. For example:

10.5.2.1. "The Motion for Item [state the number of the item] is approved by unanimous vote."

10.5.2.2. "The Motion for Item [state the number of the item] is approved by a vote of 4 to 1; Commission member X voting against the motion."

10.5.2.3. "The Motion for Item [state the number of the item] is rejected by a vote of 4 to 1; Commission member X voting in favor."

10.5.3. Unless otherwise required by law (including any State law, or City Council ordinance or resolution), in order for any action to be taken by Commission, it must be approved by a majority vote of the quorum of the Commission in attendance at a Commission meeting. Therefore, for example, if the Commission consists of a total of five members with a three member quorum, and if only three members of Commission are in attendance at a Commission meeting, only two members of Commission are required to vote in favor of an action in order for it to be approved.

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10.5.4. Examples of laws that require a "super-majority" vote of Commission include:

10.5.4.1. A "majority of the members" of Commission are required to approve an "emergency situation" in order to hold an emergency meeting of Commission (as referenced in Section 7.6 of this Resolution). In other words, if the Commission consists of a total of five members, three of the five members of Commission must vote to approve the "emergency situation," even if only three members are in attendance at the meeting at which the vote is taken.

10.5.4.2. The Commission may take action on an item not included on the Commission agenda if there is a two-thirds vote of the members of Commission determining that there is a need to take immediate action and that the need to for action came to the attention of the City subsequent to the Commission agenda being posted. Thus, if the Commission consists of a total of five members, four members of Commission must vote to approve the action. (California Government Code Section 54954.2(b).)

10.5.5. Confirming findings or resolution. If a Commission action on an item requires the Commission to take an action or make findings that are not included in the written Agenda Report, the Commission may direct the Staff Manager to: (a) prepare a resolution confirming the findings to support an action that Commission intends to take, and (b) bring the resolution back to Commission for consideration and approval at a subsequent Commission meeting. When the resolution of findings is brought back to Commission for action, the resolution may be placed on the consent calendar for final action.

10.6. Motion to Reconsider.

10.6.1. After a vote on an item is taken by the Commission in accordance with this Resolution, that item shall be considered final by the Commission, and it may be reconsidered only in accordance with this Section 10.6.

10.6.2. Except to the extent reconsideration of an item is governed by particular legal requirements, an action taken by Commission may be reconsidered only if: (a) a member of the Commission who voted in the majority (or super-majority, if required for approval of the item) either files a written request for reconsideration with the Secretary, or makes an oral request for reconsideration during a meeting of the Commission; and (b) the request for reconsideration is received by the Secretary prior to receipt of a timely challenge (pursuant to Section 10.7 of this Resolution), and within ten (10) calendar days after the Commission action.

10.6.3. If a request is made (pursuant to Section 10.6.2, above) at the same Commission meeting and prior to action on the next item on the Commission agenda, the Commission may vote on the request for reconsideration at that time. If the motion for reconsideration is seconded and approved by a vote

of Commission, the Chair may invite a new substantive motion regarding the item at that time (e.g., repeal the previous action, and take a different or new substantive action).

10.6.4. If the request is made beyond the time limits of Section 10.6.3 (above), but the request is made during a public meeting of the Commission within the time limits of Section 10.6.2 (above), the Commission may vote on the procedural request for reconsideration at that time. If the procedural motion for reconsideration is seconded, and approved by a vote of Commission, the Commission shall identify the Commission meeting at which the substance of the item shall be scheduled for reconsideration. The meeting for reconsidering the substance of the item shall be publicly noticed in the same manner as the notice for the initial action.

10.6.5. If the request is made beyond the time limits of Section 10.6.3 (above), but the request is submitted in writing to the Secretary within the time limits of Section 10.6.2 (above), the Secretary shall schedule the procedural request for reconsideration at the next available meeting of the Commission. If the procedural motion for reconsideration is seconded, and approved by a vote of Commission, the Commission shall identify the Commission meeting at which the substance of the item shall be scheduled for reconsideration. The meeting for reconsidering the substance of the item shall be publicly noticed in the same manner as the notice for the initial action.

10.6.6. Notwithstanding the limitations set forth above for reconsideration of a vote taken by Commission: (a) the Commission may, at any time, consider the rescission or repeal of any final action which is not quasi-judicial by complying with all necessary legal requirements, including those set forth in this Resolution for the establishment of items for consideration by Commission; and (b) the Commission shall reconsider any item upon direction from the City Council.

10.7. Challenging Commission Decisions.

10.7.1. To the extent a Commission is authorized by State law or City Council ordinance to take final action on a quasi-judicial decision that is not appealable to the City Council, the time limit within which to commence any lawsuit or legal challenge to that quasi-judicial decision made by the Commission is governed by California Code of Civil Procedure Section 1094.6, unless a shorter limitation is specified by any other provision of law. Under Section 1094.6, any lawsuit or legal challenge to any quasi-judicial decision made by the Commission must be filed no later than the 90th day following the date on which the decision becomes final. Any lawsuit or legal challenge which is not filed within the 90-day period will be barred. If a person wishes to challenge the nature of a Commission action in court, that person may be limited to raising only those issues that they or someone else raised at the meeting at which the action was taken, or in written correspondence delivered to the Commission at or prior to the meeting. In

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addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

10.7.2. To the extent a Commission action is not a final quasi-judicial decision subject to Resolution Section 10.7.1, above, the action shall be appealable in accordance with applicable procedures established by City Council ordinance or resolution.

11. **Meeting Minutes and Recordings.**

11.1. The Secretary shall keep an accurate written record of the proceedings of the Commission in the form of meeting minutes. Unless otherwise specified by City Council ordinance or resolution, the form of the minutes shall comply with this Section. The meeting minutes shall be in the form of "action minutes." After the minutes are recorded by the Secretary, the minutes shall be brought back to Commission on the consent calendar for review, revisions to correct inaccuracies, and approval of the Commission. The minutes shall include the elements identified in this Resolution, including the following:

11.1.1. Date, time, and place of the meeting as scheduled, and as actually occurred (including the starting and ending times for the meeting and any recesses taken during the meeting).

11.1.2. The type of meeting (as described in Sections 6 and 7 of this Resolution).

11.1.3. An identification of each item under consideration by Commission for the meeting.

11.1.4. The method by which notice was provided for the meeting, and for each item on the agenda.

11.1.5. The names of each member of Commission in attendance and each absent member of Commission. If a member of Commission arrives late or leaves early, the time of arrival or leaving shall be identified.

11.1.6. A recordation of each vote taken during the meeting, including a clear identification of the maker of the motion and second, votes in favor, votes opposed, absences, recusals, and abstentions. The recordation of each vote shall include an identification of whether the motion was approved or failed, including an identification of any "super-majority" voting requirement (See Section 10.5 of this Resolution).

11.1.7. An identification, by specific title and/or City numbering system, of each resolution adopted, or other action taken, by the Commission.

11.1.8. Testimony presented during Commission consideration of a hearing, appeal, or other action item shall identify the name of the speaker and a concise summary of the position presented.

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11.1.9. Any documents or physical evidence presented to Commission as a part of the record of proceedings in support of Commission's action on an item.

11.1.10. For the Public Comment portion of the meeting, the minutes will identify the name of the speaker and a concise summary of the topic presented.

11.1.11. Identify the date, time, and place to which any item is continued, or to which the meeting is adjourned.

11.2. The City may choose to record Commission meetings using video or audio recording devices. However, any such recording shall be in addition to the meeting minutes described above.

11.3. Members of the public may record Commission meetings, using video or audio recording devices, provided that the recording is not disruptive to the conduct of the meeting. (California Government Code Section 54953.5.)

[Updated "POLICY RESOLUTION NO. 10" – Exhibit "B"]

OVERVIEW OF OPEN MEETING LAWS UNDER THE "BROWN ACT" (Updated November 13, 2020)

The "Ralph M. Brown Act" (frequently referred to as the "Brown Act") is the State law that requires the deliberations and actions of every "legislative body" (including the City Commissions) be conducted openly, with prior public notice, and an opportunity for the public to provide input on decision making activities.[1]

The Brown Act requires that each Commission "meeting" (defined in Section 1, below) either: (a) fall within one of the narrow exceptions that have been established by the Legislature (defined in Section 2, below); or (b) follow particular procedural requirements so that the meeting is considered "open and public" (defined in Section 3, below).

Any "meeting" of a majority of members of a Commission that violates the Brown Act may result in criminal or civil penalties, attorney's fees, and potential invalidation of the Commission's actions. Therefore, please contact the City Attorney's Office if there is any question regarding the requirements of the Brown Act.

1. Definition of "meeting."
    a. As a general rule, there is a "meeting" of a City Commission whenever a majority of the Commission (i.e., three members of a five-member Commission) congregate at the same time and location to hear, discuss, deliberate, or take action upon any item that is within the subject matter jurisdiction of the Commission.

    b. Prohibited "serial meeting." There is a serial "meeting" of the Commission, even if it occurs over time in different locations, if a majority of members use a personal or technological intermediary (e.g., phone, text, e-mail, letter, or personal messenger) to discuss, deliberate, or take action on any item within the subject matter jurisdiction of the Commission. Thus, if there is a five-member Commission, Commissioner "A" may speak with Commissioner "B" regarding Commission business. However, Commissioner "A" and Commissioner "B" would then be precluded from discussing the same topics with any other member of the Commission, since to do so would mean that three members of the Commission would have "serially" discussed the same topic.

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[1] The full text of the Brown Act (California Government Code Sections 54950 – 549563) is available on the City Attorney's Webpage on the City's website. A link to the League of California Cities publication "Open & Public: A Guide to the Ralph M. Brown Act" is available on the website of the League of California Cities.

i. Social media exception to "serial meeting."[2] Effective January 1, 2021, a member of a Commission may use a social media platform that is open and accessible to the public to answer questions from the public, provide information to the public, or solicit information from the public regarding a topic within the subject matter jurisdiction of the Commission; provided that the members of the Commission do not directly communicate with one another regarding Commission business (i.e., members of the Commission may not directly respond in any way [including an emoji] to a message from another Commissioner).

2. "Meeting" exceptions. Congregations of a majority of a Commission are not subject to other requirements of the Brown Act, if: (i) the members of the Commission do not discuss among themselves, other than as a part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the Commission, and (ii) the congregation fits within one of the following limited and narrowly interpreted exceptions:

   a. A conference or similar gathering "open to the public" that involves a discussion of issues of general interest to the public or to public agencies similar to the City.

   b. An "open and publicized" meeting organized by a person or organization other than the City, to address a topic of local community concern.

   c. An "open and noticed" meeting of another body of the City, or of a legislative body of another local agency.

   d. A purely social or ceremonial occasion.

3. Definition of an "open and public" meeting, for compliance with the Brown Act." The "open and public" procedural requirements of the Brown Act are outlined in more detail in the body of Policy Resolution No. 10 (at the Policy Section numbers identified below), including the following:

   a. Staff will prepare and post the written agenda. (Policy Sections 6 and 7.)

   b. Meetings will be conducted at a location that is accessible to the public. (Policy Sections 6.2 and 7.1.3.)

   c. Meetings will be conducted in accordance with the written agenda. For items not on the agenda, there will be an opportunity for the public to address the Council (for matters within the subject matter jurisdiction of

[2] California Government Code Section 54952.2(b)(3).

the Council), but the Council is limited in its ability to respond to items not on the agenda. (Policy Sections 8, and 8.3.5.)

d. The Council will provide opportunities for public participation, and allow the public to record the meeting; but the Council is authorized to limit disruptive conduct. (Policy Sections 9 and 11.2.)

e. The Council will take its actions in a clear and open manner, and no actions will be taken by secret ballot. (Policy Sections 9 and 10.)

f. The Council will make records related to the meeting available to the public. (Policy Section 9.4.)

[Updated "POLICY RESOLUTION NO. 10" – Exhibit "C"]

OVERVIEW OF CONFLICTS OF INTEREST LAWS AND REGULATIONS (Updated November 13, 2020)

The primary purposes of this overview are to: (a) assist each member of a City Commission ("Commissioner") in identifying potential "conflicts of interest" (a City action that has a potential impact, positive or negative, on a Commissioner's personal interest), and (b) encourage Commissioners to **seek legal assistance from the City Attorney's Office if there is any potential conflict of interest related to a City action**, in order to (c) identify the steps that must be taken by the Commissioner to avoid any conflict of interest.

This overview is organized in four numbered sections, including: (1) Identifying and Avoiding Potential Conflicts of Interest, (2) Financial Disclosure Requirements (FPPC Forms 700 and 806), (3) Ethics Training and Education (AB 1234), and (4) Aspirational Ethical Guidelines, and Additional Resources.

1. **Identifying and Avoiding Potential Conflicts of Interest.** There are five potential categories of conflict of interest laws, summarized below, that define the parameters by which a Commissioner must take actions to avoid a conflict between a personal interest and a City action, including: (a) the Political Reform Act, as implemented by the Regulations of the Fair Political Practices Commission ("FPPC");[1] (b) Interests in City Contracts (Government Code Section 1090); (c) common law conflicts of interest (such as bias and due process); (d) common law conflicts of interest based on incompatibility of office; and (e) City Charter Section 103 (prohibitions on accepting gifts).

    a. **Political Reform Act.** As a general rule, no Commissioner shall make, participate in making, or in any way attempt to use his or her City position to influence a City decision if it is reasonably foreseeable that the City decision will have a material financial effect on a financial interest of the Commissioner.[2] The key elements of this general rule are summarized, below:

        i. Identify the Commissioner's "financial interest" that could potentially be affected by the City action, including: (1) an ownership or rental interest in real property worth at least $2,000, (2) a source of income of $500 or more within 12 months of the action, (3) a source of a gift of $500 or more within 12 months of the action,[3] (4) a business entity investment worth at least $2,000, (5) a business entity in which

[1] California Government Code §§ 87100, *et seq.*; and California Code of Regulations, Title 2, Division 6, (the "FPPC Regulations"), particularly Chapter 7 (§§ 18700, *et seq.*)

[2] FPPC Regulations § 18700.

[3] California Government Code § 89503, and FPPC Regulations § 18940.2 (the $500 threshold will be increased to $520 as of January 1, 2021; and it is updated December 31, 2022, and every two years thereafter).

Commissioner is an officer, director, or employee, or (6) personal finances of the Commissioner.

- Under State law, a Commissioner's financial interests are deemed to include the financial interests of the Commissioner's spouse or dependent child.[4]
- Immediate Family Members. While State law defines the interest of a family member to be based on whether the family member is a spouse or dependent, any City action that relies on federal funding is subject to the much tighter restrictions of federal law. Under federal law, a Commissioner must avoid a conflict involving "immediate family ties" which is defined to include (whether by blood, marriage, or adoption): the Commissioner's spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws.

ii. Is it "reasonably foreseeable" that a City decision will have any financial effect on a "financial interest"? (1) If the financial interest is "explicitly involved" (e.g., a named party, applicant, or property) in the City decision, then "reasonable foreseeability" is presumed. (2) If the financial interest is not "explicitly involved," then the financial effect is reasonably foreseeable if it is a "realistic possibility" but more than "hypothetical or theoretical."

iii. Will the reasonably foreseeable financial effects be "material"? If the financial interest is directly involved in the City decision, "materiality" is presumed. Otherwise, the "materiality" element of the analysis includes far too many variables to summarize in this overview. It is recommended that questions regarding "materiality" be discussed with the City Attorney's Office. Emphasizing that this is not an exhaustive list, some examples of likely "material" financial effects on financial interests include City decisions that: (1) impact property within 1,000 feet of Commissioner's real property interest, or impact the value, development potential, or ability to use the real property; (2) cause a measurable financial benefit or loss to the Commissioner's personal finances, or to an individual who is a financial interest (e.g., source of income or gift); or (3) contribute to a change in the value of a privately held business (or stock value of a publicly traded business) that is a financial interest. A financial effect is not material if it is "nominal, inconsequential, or insignificant."

[4] California Government Code § 82029, and FPPC Regulations § 18700.

iv. Is there any exception that permits the Commissioner to participate in a City decision that has a reasonably foreseeable material financial effect on a financial interest? Again, although it is not feasible to provide a comprehensive list of exceptions, some examples of situations in which a Commissioner is permitted to participate include: (1) The material financial effects of a City decision on the Commissioner are indistinguishable from the effects on the public generally. (2) The Commissioner is "legally required" to participate in the decision, generally due to a majority of Commissioners having a material financial interest; which requires a random selection of Commissioners necessary to establish a quorum. (3) The City decision can be segmented into a portion for which the Commissioner does have a material interest (which is considered first, without participation by the Commissioner), and a separate portion for which the Commissioner does not have a material interest (which is considered second, with participation by the Commissioner).

v. Process for disclosure and recusal:[5] If it is reasonably foreseeable that a City decision will have a material financial effect on a Commissioner's financial interest, and there is no applicable exception that permits the Commissioner to participate in the decision, then:
   - The Commissioner is precluded from making, participating in making, or in any way attempting to use his or her official position to influence the City decision (this includes any negotiations, and any contact by the Commissioner with any other City official or employee, for the purpose of attempting to influence the City decision).
   - If the Commissioner is on the dais during a Council meeting, when the item is announced (and before substantive discussion on the item begins), the Commissioner is required to: (a) disclose the financial interest and intent to recuse from any participation in the discussion, and (b) step down from the dais and leave the room while the item is being discussed (however, a Commissioner may remain in the room, and simply recuse from voting, if the item is on the consent calendar).
   - As exceptions to the above processes: (a) the Commissioner is permitted to appear before the Commission if the Commissioner recuses and steps down from the dais, and is appearing as a member of the

[5] FPPC Regulations § 18704.

general public for the sole purpose of presenting his or her personal interests (and not in representation of another); and (b) if the Commissioner is a design professional (architect, engineer, or similar), the Commissioner is permitted to submit design drawings to the City on behalf of a client, and discuss the design with City staff.

b. **Interests in City Contracts (Government Code Section 1090).** Under Government Code Sections 1090 through 1099, a Commissioner is generally prohibited from being "financially interested" in a City contract. For the purpose of Section 1090, a Commissioner may have a "financial interest" in a contract even if the Commissioner receives no compensation from the contract (e.g., an uncompensated officer of certain types of non-profit entities).[6] However, there are three categories of interests under Section 1090 that, depending on the category: (1) will absolutely preclude the City from entering into the contract (for any financial interest that is not defined as a "non-interest" or a "remote interest"); (2) will require a Commissioner to recuse from participation similar to the requirements under the Political Reform Act, summarized above (if the interest is defined as a "remote interest");[7] or (3) may allow a Commissioner to participate (if the interest is defined as a "non-interest").[8]

   i. It is very important for a Commissioner to contact the City Attorney's Office if there is any possibility that the Commissioner has any interest in a contract being considered by the City (even if the interest is as an uncompensated member or officer of a non-profit entity), since the penalties for a violation of Section 1090 are severe, including criminal and monetary penalties against the Commissioner, and the contract being rendered void and unenforceable.

c. **Common Law / Appearance of Bias / Due Process.** In addition to the statutory prohibitions against financial conflicts of interest discussed above, there is also a legal doctrine based on common law (articulated by the courts), that requires public officials to use their official positions for the benefit of the public.

   i. Generally, a Commissioner is impliedly bound to exercise the powers conferred on him or her with disinterested zeal, skill and diligence for the benefit of the public.[9] Therefore, a Commissioner must abstain from participation in a City decision

[6] See, for example, California Government Code §§ 1091(b) and 1091.5(a)(8).
[7] See, for example, California Government Code § 1091.
[8] See, for example, California Government Code § 1091.5.
[9] Noble v. Palo Alto (1928) 89 Cal.App. 47, 51.

if the Commissioner's personal interests (including the interests of a personal friend or family member) conflict with the duty that the Commissioner owes to the broader public good; and the Commissioner should abstain if there is a perception of any similar conflict.[10]

ii. A related legal principle requires decisions by Commissioners be made with "due process," which requires Commissioners to be "impartial" on matters that are presented to City Council for a decision. A Commissioner may maintain impartiality even if the member voices an opinion regarding a particular matter prior to the Council taking action - as long as the Commissioner remains open to hearing competing information and ideas prior to making a final decision.[11] In other words, it is important that a Commissioner does not indicate that his or her "mind has been made up" before hearing all sides of an issue during a public meeting. Similarly, a Commissioner should take care to avoid becoming personally embroiled in (or advocating for or against) any particular side of an issue prior to a hearing.

d. **Common Law - Incompatibility of Office.** Under the doctrine of "incompatibility of office," a Commissioner is legally precluded from simultaneously holding two public offices if there is a significant clash of duties or loyalties between the two offices.[12]

i. "Public offices" subject to this doctrine include those with a right, authority, and duty created and conferred by law, with a tenure that is not transient, occasional, or incidental.[13] Examples of the types of "clashes" that have been found incompatible include: exercising supervisory, auditory, appointive, or removal power over the other. Examples of the types of offices that have been found "incompatible" under this doctrine include the offices of fire chief of a county fire protection district and a member of the county board of supervisors, offices of school board member and City Planning Commission member, and offices of the city and county planning commission.

ii. Under this common law doctrine, when a public official is found to have accepted two incompatible public offices, the first office is automatically vacated. Therefore, it is recommended that a Commissioner consult with the City Attorney's Office prior to accepting a second position with another legislative body.

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[10] See California Government Code § 1126 regarding incompatible activities.
[11] City of Fairfield v. Superior Court (1975) 14 Cal.3d 768, 779.
[12] 66 Cal.Op.Atty.Gen. 293 (1983).
[13] People ex rel. Chapman v. Rapsey (1940) 16 Cal.2d 636, 639-640.

e. **Acceptance of Gifts.** As a broad general statement, City officials are legally prohibited from accepting any gift if: (1) the gift is provided by any person who is engaged in business with (or who is endeavoring to secure a contract with) the City; [14] **or** (2) the gift is provided by a public utility; **or** (3) the value of gifts from a single source[15] exceeds $500 in a calendar year.[16] City Charter section 103 provides (in relevant part):

> "No member of the City Council or other officer or employee of the City shall knowingly accept any gift, frank, free ticket, pass, reduced price or reduced rate of service from any person, firm or corporation operating a public utility or engaged in business of a public nature with the City or from any person known to him to have or to be endeavoring to secure a contract with the City. Any officer or employee violating any provision of this section shall be guilty of malfeasance and shall be removed from office."

i. The City has historically interpreted the term "gift" (as used in the City Charter) in a manner consistent with the interpretation of State law (under the Political Reform Act[17] and the implementing regulations of the FPPC).[18]

ii. Therefore, a gift is not "accepted" and the City Charter is not violated if the recipient of the gift takes one of the following actions, as established by the FPPC:[19]
   - The gift is returned, unused, to the donor within 30 days of receipt.
   - The gift is donated, unused, to a charitable organization (non-profit, tax-exempt 501(c)(3)) within 30 days of receipt, and the gift is not claimed as a charitable contribution for tax purposes.
   - The gift is donated, unused, to a federal, state, or local government agency within 30 days of receipt, and the gift is not claimed as a charitable contribution for tax purposes.

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[14] City Charter § 103.
[15] FPPC Regulation § 18945.1 defines a "single source" of gifts, which generally includes an aggregation of gifts from multiple sources if gifts are directed and controlled by a majority of the same people.
[16] California Government Code § 89503; and FPPC Regulation § 18940.2 ((the $500 threshold will be increased to $520 as of January 1, 2021; and it is updated December 31, 2022, and every two years thereafter).
[17] California Government Code §§ 87100 through 87450.
[18] FPPC Regulations §§ 18700 through 18720, and 18940 through 18961.
[19] California Government Code § 82028; and FPPC Regulation §§ 18940 through 18961.

- The recipient, within 30 days of receipt, reimburses the donor for the value of the gift.

iii. There are additional exceptions to the definition of gift, that generally relate to payments that are made based on relationships outside the Commissioner's status as a public official. [20] However, many of these definitions turn on very specific facts, and it is recommended that the City Attorney's Office be contacted if a Commissioner has any questions regarding the propriety and legality of accepting certain categories of gifts.

2. **Financial Disclosure Requirements (Form 700 and 806).** Biennially, every even year, the City Council adopts the City's "Local Conflict of Interest Code,"[21] which identifies the City employees, officials, and consultants who are required to prepare and file a Statement of Economic Interests (commonly referred to as "Form 700"). The Local Conflict of Interest Code also identifies the substance of what financial interests are required to be reported for each member, as well as the procedures for filing (including electronic filing). Commissioners are required to file a Form 700, and Commissioners may be required to file additional financial disclosure forms (such as Form 806, that applies to Commissioners who hold compensated positions on other appointed boards). Helpful information regarding Form 700 filings is also available on the FPPC website,[22] and the City Clerk is available to answer questions regarding applicable requirements. In general, a Form 700 is required to be filed: (a) within 30 days of assuming office, (b) annually, prior to April 1 of each year, and (c) within 30 days after leaving office; and any violation of the filing requirements, including late filing, is subject to administrative, criminal, or civil sanctions.[23]

3. **Ethics Training and Education (AB 1234).** If a Commissioner receives any type of compensation, salary, stipend, or reimbursement from the City for any actual or necessary expenses, the Commissioner is required to receive biennial (once every two years) training regarding general ethical principles and ethics laws.[24] This is known as "AB 1234" training, based on the 2005 Assembly Bill that established the requirements. The training is available from various sources, including online training through the websites of the FPPC and the California Attorney General[25] and the Institute for Local

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[20] The City Attorney has summarized additional information regarding the legal parameters for the "Limitations on Receiving Gifts" in Administrative Regulation 3.02.002.
[21] The Council approved an update to the Local Code on September 15, 2020 (R2020-111). Consult with the City Clerk for the most recent Local Conflict Code.
[22] http://www.fppc.ca.gov/Form700.html
[23] FPPC Regulation § 18730.
[24] California Government Code §§ 53234, *et seq.*
[25] http://localethics.fppc.ca.gov/login.aspx

Government.[26] Evidence of completion of the training must be filed with the City Clerk.

4. **Aspirational Ethical Guidelines, and Additional Resources.** It is an accepted tenet of our democratic tradition that while City officials (including Commissioners) wield the power of local government, they must only do so as stewards of public resources and holders of the public trust. For this reason, City officials are held to high standards of ethical conduct that go beyond compliance with the obligations imposed by law (that are summarized in this overview). When City officials strive to achieve these higher ethical standards (e.g., trustworthiness, responsibility, respect, loyalty, compassion, and fairness), actions will be taken that are in the best interests of the City and the whole community, and that will serve as a positive example to co-workers, residents, businesses, and visitors.

    a. There are extremely helpful supplemental resources available to assist Commissioners in taking ethical actions that avoid conflicts of interest, including: (1) the "Ethics and Transparency" webpage of the Institute for Local Government,[27] and (2) the FPPC Advice webpage.[28]

    b. Because conflict of interest laws are voluminous and complex, Because the application of these conflict of interest regulations can be a complicated and fact-specific inquiry, and because the penalties for violations may be severe (including civil penalties, forfeiture of office, or criminal sanctions), it is strongly recommended that each Commissioner seek more particular advice from the City Attorney's Office as early as possible.

[26] http://www.ca-ilg.org/post/ab-1234-self-study
[27] http://www.ca-ilg.org/ethics-transparency
[28] http://www.fppc.ca.gov/advice.html